16589

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~346.~~ 76

THE TOWN OF THOMPSON, IN THE COUNTY OF SULLIVAN, PLAINTIFF IN ERROR,

vs.

ORLANDO PERRINE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 15, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 346.

THE TOWN OF THOMPSON, IN THE COUNTY OF SULLIVAN, PLAINTIFF IN ERROR,

vs.

ORLANDO PERRINE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2½	2
Summons	3	2
Complaint	5	2
Answer	20	6
Stipulation and order	30	8
Trial of cause	32	9
Judgment	36	10
Bill of exceptions	39	11
Order as to evidence	39	11
EVIDENCE FOR PLAINTIFF.		
Chapter 553 of the laws of the State of New York, passed May 4, 1868	42	12
Judgment roll in an action tried in this court between these parties, May, 1878	47	18
William H. Cady sworn	228	84
Benjamin Calahan sworn	262	94
Erastus T. Mead sworn	263	94
William H. Van Cleek sworn	263	94
Orlando Perrine sworn	264	94
EVIDENCE FOR DEFENSE.		
Gulien Pendall sworn	274	97
Affidavit of James Brown	274	97
Consent of tax-payers of the Town of Thompson	277	98
Judgment-roll in an action between the people of the State of New York ex rel. Kilbourne et al. against Giles M. Benedict et al.	280	99
Thomas Marvin sworn	292	123
Opinion of Judge Wallace on motion for new trial	304	127
Assignment of errors	309	128
Joinder in error	314	129
Bond on appeal to United States Supreme Court	316	130
Citation	318	131

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for th southern district of New York, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Orlando Perrine, plaintiff, and the Town of Thompson, in the County of Sullivan, defendant, a manifest error hath happened, to the great damage of the said Town of Thompson, as is said, and as appears by its complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgments be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 11th day of September, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and fourth.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

2 STATE OF NEW YORK,
Sullivan County, ss:

Timothy F. Bush, of said county, being duly sworn deposes and says, that on the 12th day of September, 1879, he duly served the within writ of error on Messrs. James K. Hill, Wing & Shoudy, the attorneys for Orlando Perrine, pl'ff in said writ therein named, by delivering a copy thereof personally at their office, No. 37 & 39 Wall street, New York, and leaving the same at said office for the said attorneys, with a clerk of said attorneys; and that on the 11th day of September, 1879, deponent lodged a copy of said writ, for the said attorneys, in the clerk's office of the circuit court of the United States for the southern district of New York.

T. F. BUSH.

Sworn before me September 18th, 1879.

PETER E. PALEN,
Notary Public for Sull. Co.

(Indorsed:) A 245. U. S. Supreme Court. The Town of Thompson, in the County of Sullivan, plaintiff in error, ag'st Orlando Perrine. No. 13. Writ of error.

Allowed:

SAM'L BLATCHFORD, *C. J.*

SEPT. 11, 1879.

U. S. circuit court, Sept. 19, 1879. John I. Davenport, clerk.
Copy lodged Sept. 11th, 1879.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second
2½ circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to three hundred and nineteen inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of the Town of Thompson, in the County of Sullivan, plaintiff in error, against Orlando Perrine, defendant in error, No. 3, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and the Independence of the said United States the one hundred and fourth.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

3, 4 UNITED STATES CIRCUIT COURT,
For the Southern District of New York:

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF SULLIVAN. } No. 3.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff' attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the honorable Morrison R. Waite, Chief Justice of Supreme Court of the United States, at the city of New York, this 23d day of August, in the year one thousand eight hundred and seventy-eight.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

JAMES K. HILL, WING & SHOUDY,
Plaintiff' Attorney.

Office and post-office address, 37 and 39 Wall street, city of New York.

5 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF SULLIVAN.

Orlando Perrine, plaintiff in this suit, by James K. Hill, Wing &

Shoudy, his attorneys, complains of the Town of Thompson, in the County of Sullivan, in the State of New York, defendant, and avers:

First. That the plaintiff is a resident of the State of New Jersey, and that the defendant is a corporation duly created under and by virtue of the laws of the State of New York, and was and is a town in the County of Sullivan, in the State of New York, and in the southern district of said State.

Second. That on the 4th day of May, 1868, the legislature of
6 the said State of New York passed an act, which became a law, entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deer Park, in the county of Orange, to Port Jervis, Orange County."

That in and by the said act of the legislature the Town of Thompson was authorized in substance and effect to aid in the construction of a railroad, and to issue bonds through commissioners to be appointed for that purpose.

That said act is chapter 553 of the laws of the State of New
7 York for 1868, and the plaintiff prays leave to refer to the same as a part of this complaint, with like effect as if said act was fully set out and incorporated herein.

That on the second day of April, 1869, the legislature of the said State of New York duly passed another act, which also became a law, entitled "An act to amend an act entitled an act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deer Park, in the county of Orange, to Port Jervis, Orange County, passed May fourth, eighteen hundred and sixty-eight.

8 That the said last-mentioned act is chapter 96 of the laws of the State of New York for 1869, and the plaintiff prays leave to refer to the same as a part of this complaint with, like effect as if said last-mentioned act was fully set out and incorporated herein.

Third. That afterwards, and in pursuance of the aforesaid acts of the legislature, Giles M. Benedict, Nathan S. Hamilton, and William H. Cady were duly appointed commissioners for the said Town of Thompson to carry into effect the purposes and provisions of the said acts of the legislature, and that they subsequently duly qualified and entered upon the discharge of their duties as such commissioners.

Fourth. That the said commissioners afterwards, and on or about the 1st day of May, 1869, in pursuance of the said acts of the legislature, duly executed and issued one hundred and forty-eight bonds of
9 one thousand dollars each, numbered from 1 to 148 both inclusive, in the following form:

"No. .] UNITED STATES OF AMERICA. [$1,000.00.

"TOWN OF THOMPSON, STATE OF NEW YORK, COUNTY OF SULLIVAN.

"This bond is a valid security, being issued by virtue of an act enti-

tled 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May fourth, eighteen hundred and sixty-eight, and of the act amendatory thereof, passed April first, eighteen hundred and sixty-nine.'

10 "Know all men by these presents, that the Town of Thompson, in the County of Sullivan and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the acts above-entitled and referred to, and for value received in the stock of the Monticello and Port Jervis Railway Company, promises to pay the bearer the sum of one thousand dollars on the first day of March, in the year one thousand eight hundred and ninety-nine, at the National Union Bank, of Monticello, N. Y., with interest at seven per cent. per annum, payable semi-annually, on the first day of March and September in each year, at the Hanover National Bank, of the city of New York, on the presentation and surrender of the coupons for such interest.

"In witness whereof we have hereunto set our hands and seals
11 and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this first day of May, in the year one thousand eight hundred and sixty-nine.

"(Signed) "G. M. BENEDICT.
"N. S. HAMILTON.
"W. H. CADY,
"*Commissioners.*

"Registered in the county clerk's office of the county of Sullivan this first day of May, 1869.

"C. S. MORRIS,
"*County Clerk.*"

Fifth. That attached to each of said bonds at the time of its issue were fifty-nine coupons, numbered to correspond with the bond to which they were attached, and signed by the said W. H. Cady, one of the said commissioners, whereby the said Town of Thompson, in substance and effect, promised and undertook to pay to the bearer thereof, at the Hanover National Bank, at the city of New York, semi-annually,
12 on the first day of March and September in each year, the sum of thirty-five dollars as and for interest on such bond.

That the said bonds and coupons upon their being issued passed into the possession of and became the property of various persons and corporations in good faith and for a valuable consideration.

Sixth. That afterwards, and on the twenty-eighth day of April, 1871, the legislature of the State of New York passed an act, which became a law, legalizing and confirming the acts of the said Nathan S. Hamilton, Giles M. Benedict, and William H. Cady as commissioners, in issuing and disposing of the said bonds; that the said last-mentioned act is entitled "An act to legalize and confirm the acts of the commissioners of the Towns of Thompson and Forestburgh, in the county of Sullivan, and of Deer Park, in the county of Orange, in issuing and
13 disposing of the bonds of their respective towns, to build a railroad from the village of Monticello, in the county of Sullivan,

to the village of Port Jervis, in the county of Orange, under chapter five hundred and fifty-three of the laws of eighteen hundred and sixty-eight, and to legalize and confirm all bonds heretofore issued by such commissioners under said chapter of laws now held by or owned by bona fide purchasers."

That the said last-mentioned act is chapter 809 of the laws of the said State for the year 1871, and the plaintiff prays leave to refer to the same as a part of this complaint, with like effect as if said last-mentioned act was fully set forth and incorporated herein.

Seventh. That the Town of Thompson paid to the respective holders thereof the coupons that became due on the first day of March
14 and September, 1870, and on the first day of March and September, 1871.

Eighth. That subsequently, but prior to the commencement of this action, the plaintiff purchased in the open market at the city of New York, for value, and became the owner of the coupons attached to the bonds numbered 19, 20, 26, 41, 49, 57, and 58, that became due and payable on the first day of March, 1872, the first day of September, 1872, the first day of March, 1873, the first day of September, 1873, the first day of March, 1874, the first day of September, 1874, the first day of March, 1875, the first day of September, 1875, the first day of March, 1876, the first day of September, 1876, the first day of March, 1877, the first day of September, 1877, and the first day of March, 1878; and also the coupons attached to the bonds numbered 3, 14, 15, 69, 78, 97, 98, 131, 132, 133, 134, 135, 136, and 137, that became due and payable on the first day of March, 1873, the first day of September, 1873,
15 the first day of March, 1874, the first day of September, 1874, the first day of March, 1875, the first day of September, 1875, the first day of March, 1876, the first day of September, 1876, the first day of March, 1877, the first day of September, 1877, the first day of March, 1878; and also the coupons attached to the bond numbered 99, that became due and payable on the first day of March, 1874, the first day of September, 1874, the first day of March, 1875, the first day of September, 1875, the first day of March, 1876, the first day of September, 1876, the first day of March, 1877, the first day of September, 1877, the first day of March, 1878, and that all of the said coupons were delivered to the plaintiff.

Ninth. That although all the said coupons maturing on and prior to the first day of March, 1878, purchased and acquired as aforesaid, have been duly presented for payment at the said Hanover
16 National Bank where they were made payable, and payment thereof demanded, they have not been paid, and the said Town of Thompson has neglected and refused to make any provision for their payment.

Tenth. That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said coupons, as follows, viz:

7	coupons	that	became	due	March	1st, 1872.
7	"	"	"	"	September	1st, 1872.
21	"	"	"	"	March	1st, 1873.
21	"	"	"	"	September	1st, 1873.
22	"	"	"	"	March	1st, 1874.
22	"	"	"	"	September	1st, 1874.
22	"	"	"	"	March	1st, 1875.
22	"	"	"	"	September	1st, 1875.

22 " " " " March 1st, 1876.
22 " " " " September 1st, 1876.
22 " " " " March 1st, 1877.
22 " " " " September 1st, 1877.
22 " " " " March 1st, 1878.

Said coupons amounting in the aggregate to $8,890.

Wherefore the plaintiff demands judgment against the defend-
17 ant for the said sum of eight thousand eight hundred and ninety dollars, with interest on $245 thereof from March 1st, 1872; $245 thereof from September 1st, 1872; on $735 from March 1st, 1873; on $735 thereof from September, 1873; on $770 thereof from March 1st, 1874; on $770 thereof from September 1st, 1874; on $770 thereof from March 1st, 1875; on $770 thereof from September 1st, 1875; on $770 thereof from March 1st, 1876; on $770 thereof from September 1st, 1876; on $770 thereof from March 1st, 1877; on $770 thereof from September 1st, 1877; and on $770 thereof March 1st, 1878, and the costs and disbursements of this action.

JAS. K. HILL, WING & SHOUDY,
Plaintiff's Attorneys.

Office and post-office address, Nos. 37 & 39 Wall street, New York.

(Endorsed:) U. S. circuit court, southern district of New York.
18 Orlando Perrine against The Town of Thompson, in the County of Sullivan. No. 3. Summons and complaint. Jas. K. Hill, Wing & Shoudy, plaintiff's attorneys, 37 & 39 Wall st., N. Y. City. U. S. circuit court. Filed Aug. 29, 1878. John I. Davenport, clerk.

I hereby certify that on the 27th day of August, 1878, near Monticello, Sullivan County, State of New York, in my district, I personally served the within summons and complaint upon the within-named the Town of Thompson, of the County of Sullivan, by exhibiting to Charles T. Kilburn, supervisor of said town, the within original, and at
19 same time leaving with him a copy thereof.
Dated August 29, 1878.

LOUIS F. PAYNE,
U. S. Marshal S. D. of N. Y.

J. M. M.

20 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

I. The defendant above named, by T. F. Bush, its attorney, in answer to the plaintiff's complaint herein, denies each and every allegation in the said complaint not hereinafter expressly admitted or answered unto.

II. In further answering, the defendant alleges that this court has not jurisdiction of this action; that the bonds and coupons referred to in the complaint were each and all of them issued without authority of law and in violation of chapter 553 of the laws of New York for 1868, referred to in said complaint, and were defective and void, as is
21 more fully hereafter set forth.

That the same were held and owned by persons residing in the State of New York at the time they were transferred to the plaintiff, and that the plaintiff purchased and took them, and each and every of them, by assignment from said persons residents of the State of New York, as aforesaid, who could not maintain an action thereon in this court; and that the said bonds and coupons were not negotiated to the plaintiff under or by the law-merchant, but that the plaintiff at the time of the purchase and assignment thereof had a knowledge of the said defects and of the illegal issue and exchange of the said bonds hereinafter set forth. Wherefore the defendant alleges that under the provisions of an act of Congress of the United States approved March 3d, 1875, this court has no jurisdiction of this action.

22 III. And in further answering, the defendant alleges that the coupons referred to in the complaint were transferred to the plaintiff, and that he purchased the same at a nominal consideration for the sole purpose of bringing an action thereon in this court, and with a full knowledge that an action thereon could not be maintained in this court by the persons from whom he purchased the same.

IV. In further answering, the defendant alleges that each and all of the acts of the legislature of the State of New York referred to in the second item of said complaint, and also the act of the said legislature referred to in the sixth item of said complaint, passed April 28th, 1871, were passed by the said legislature in violation of the provisions of the constitution of the State of New York, and without power to en-

23 act the same, and are therefore unconstitutional and void, and that all proceedings had under the said several acts are void and of no effect.

V. In further answering, the defendant specifically denies that Nathan S. Hamilton, William H. Cady, and Giles M. Benedict, or any of them, were ever appointed commissioners of the said Town of Thompson under the provisions of said acts; also denies that the said alleged commissioners, or any of them, had any authority to issue the bonds of the said Town of Thompson; also denies that the bonds and coupons referred to in the complaint were issued by the procurement, consent, or with the knowledge of this defendant; also denies that the defendant in any manner ever ratified or confirmed the issue of the said

24 bonds, either by the payment of interest thereon or in any other manner; also denies that the said act of 1871 ratifies and confirms the issue of said bonds.

VI. In further answering, the defendant alleges that in and during the year 1869 the said Giles M. Benedict, Nathan S. Hamilton, and William H. Cady, assuming to act as commissioners of said town, but without a shadow of authority therefor, did execute the bonds set forth in the complaint. That at the time they so executed the same, the consents of the tax-payers of the said town had not been obtained and filed in conformity to the said acts of the legislature of the State of New York, and that the said pretended commissioners issued the said bonds, and exchanged them for the stock of the Monticello &

25 Port Jervis Railroad Co., and did not sell them for cash, and at par, as required by the provisions of the said act of the legislature of the State of New York, passed May 4th, 1868, and of which illegal issue the plaintiff had knowledge.

VII. In further answering, the defendant alleges that before all of the said bonds and coupons were issued, and before any of them had passed out of or beyond the hands or ownership of the said railroad company, to wit, on the 2d day of July, 1869, an action was com-

menced in the supreme court of the State of New York, by the attorney-general of said State, in the name of the people, on the relation of some of the tax-payers of said town against the said railroad commissioners and against Messrs. Cott & Crowley, who had contracted to construct the said road in consideration of the said bonds—said
26 Monticello and Port Jervis Railroad Company and the said Town of Thompson. The complaint in said action was, at the same time, duly filed in the office of the clerk of Sullivan County, being the place of trial of said action; by which complaint it was, among other things, alleged that the said bonds were fraudulently and illegally issued. That the said commissioners had acted without power or right in issuing the same, and in transferring them for the stock of the said railroad company, and in subscribing for the stock of said company, and the relief was claimed in said complaint that the said bonds and coupons should be adjudged to have been issued without authority and to be null and void, and that the stock subscribed for by said commissioners and received by them in exchange for said bonds should
27 be surrendered to said company, and that the same should be cancelled; and that the said action has ever since the said 2d day of July, 1869, been pending in the said supreme court. That such proceedings were duly had in the said action that a judgment and decree of said court was duly obtained therein, by which it was adjudged and decreed that the said bonds and coupons had been issued without power or authority by said commissioners, and that the same are null and void, and that each and every one of said bonds should be delivered up and cancelled, and be and remain of no further force or effect; and that the said stock so subscribed for by the said commissioners, and received in consideration of said bonds and coupons, should be cancelled and surrendered to said railroad company, and which
28 said judgment and decree was duly entered in the clerk's office of the said county of Sullivan, and remains in full force and effect.

VIII.

In further answering, the defendant admits that it is one of the towns in the county of Sullivan, State of New York.

Wherefore the defendant demands that the said complaint be dismissed, with costs.

T. F. BUSH,
Att'y for Defendant.

(Endorsed:) U. S. circuit court, southern district of New York. Orlando Perrine against The Town of Thompson, county of Sulli-
29 van. No. 3. Answer. T. F. Bush, def't's att'y, Monticello, N. Y. U. S. circuit court. Filed Sept. 21, 1878. John I. Davenport, clerk.

30 U. S. circuit court.

ORLANDO PERRINE
vs.
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

Two causes, Nos. 80 & 80½, on the calendar of this court, April 25th, 1879.

The above causes having been reached in their regular order on the calendar, it is hereby stipulated that the evidence *that the evidence* in both causes shall be taken together, objections and exceptions taken, & shall be regar'ed as the evidence, objections, and exceptions in each cause.

(S'd) JAS. K. HILL, WING & SHOUDY,
Pl'ff's Att'y.

(S'g') T. F. BUSH, *Def't's Att'y.*

31 (Endorsed:) U. S. circuit court. Orlando Perrine vs. The Town of Thompson, in the County of Sullivan. Copy, stipulation, and order. Jas. K. Hill, Wing & Shoudy, pl'ff's att'ys. Filed in open court April 25, '79.

32 At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Friday, the 25th day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Present, the honorable William J. Wallace, judge.

ORLANDO PERRINE *vs.* THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.	Two cases, Nos. 80 and 80½, on the present calendar of this court.

On motion of R. Hill, esq'r., of counsel for the plaintiff in the above-entitled cases, ordered trial.

Jurors sworn.

John S. Foster, Augustus Kirkham, Robert Jardine, William Jarvis, L. G. Cohen, Gustavus Arnold, Geo. Abeel, jr., Daniel Hagencamp, Hugh O'Donnell, John E. Andrew, Zebedee M. Quimby, William Richardson.

Mr. Hill opens the case on the part of the plaintiff.

Evidence for the plaintiff.

Wiliiam H. Cady	sworn.
33 William H. Seymour	sworn.
Benjamin H. Callahan	"
Erastus F. Mead	"
William H. Van Kleech	"
Orlando Perrine	"

Evidence for the defendant.

Gulian Pendell	sworn.
Francis Marvin	"

F. F. Bush, esq., of counsel for the defendant, moves that the court direct the jury to find a verdict for the defendants, and is heard in support of said motion.

The court denies said motion, and Mr. Bush excepts to the ruling of the court in so doing.

In case No. 2 (80) the court directs the jury to find a verdict for the plaintiff for the sum of $16,953.57. The jury say that, by direction of the court in case No. 2 (80), they find a verdict for the plaintiff for the sum of 16,953.57, and so say they all.

Mr. Bush excepts to the ruling of the court in directing the jury in case No. 2 (80) to find a verdict for the plaintiff for 16,953.57.

In case No. 3 (80½) the court directs the jury to find a verdict *a verdict* for the plaintiff for the sum of $11,265.30, and the jury say *say* that in case No. 3 (80½), by direction of the court, they find a verdict for the plaintiff for the sum of $11,265.30, and so say they all.

34 Mr. Bush excepts to the ruling of the court in directing the jury in case No. 3 (80½) to find a verdict for the plaintiff for the sum of $11,265.30.

Mr. Bush moves for a new trial herein.

On motion of Mr. Bush, ordered that the plaintiff have sixty days' stay within which to argue a motion for a new trial herein.

ORLANDO PERRINE
vs.
THE TOWN OF THOMPSON, IN THE COUNTY of Sullivan.

Two causes, Nos. 80 and 80½, on the calendar of this court April 25th, 1879.

The above causes having been reached in their regular order on the calendar, it is hereby stipulated that the evidence in both causes shall be taken together; that the evidence, objections, and exceptions
35 taken shall be regarded as the evidence, objections, and exceptions in each case.

JAS. K. HILL,
WM. J. LUDINGTON,
Pl'ff's Att'ys.
T. F. BUSH, *Def't's Att'y.*

Ordered accordingly.
(S'g'd) WM. J. WALLACE.
A copy.

JOHN I. DAVENPORT, *Clerk.*

36 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

No. 3.

The issues in this action having been brought on for trial before the honorable William J. Wallace and a jury, at a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on Friday, the 25th day of April, in the year of our Lord one thousand eight hundred and seventy-nine, and the issues having been tried and a verdict having been duly rendered by direction of the court on the said 25th day of April, 1879, and the
37 plaintiff's costs having been adjusted by the clerk of this court at the sum of two hundred and nine $\frac{20}{100}$ dollars.

Now, on motion of James K. Hill, Wing & Shoudy, plaintiff's attorneys, it is adjudged that the plaintiff, Orlando Perrine, recover of the defendant, The Town of Thompson, in the County of Sullivan,

the sum of eleven thousand two hundred and sixty-five $\frac{30}{100}$ dollars, found by the jury, with two hundred and nine $\frac{20}{100}$ dollars, interest and costs, making, in all, eleven thousand four hundred and seventy-four $\frac{50}{100}$ dollars.

11,265 30
209 20
11,474 50

Judgment signed this 19th day of July, A. D. 1879.

J. M. DEUEL,
Dep'ty Clerk.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Or-
38 lando Perrine vs. The Town of Thompson, in the County of Sullivan. No. 3. Judgment roll. Jas. K. Hill, Wing & Shoudy, pl'ff's att'y', 37 & 39 Wall st., N. Y. U. S. circuit court. Filed Jul' 19, 1879. John I. Davenport, clerk.

39 United States circuit court, southern district of New York.

ORLANDO PERRINE, PL'FF,
ag'st
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan, defendant. } No. 3.

This action No. 3, and being No. 80½ on the circuit calendar, was commenced by the service of a summons and complaint on the 17th day of July, 1878. The pleadings therein are annexed to and a part of the judgment-roll in the said action.

The cause was brought on for trial and tried before Hon. Wm. J. Wallace and a jury at a term of this court held in said district in the month of April, 1879.

Before proceeding to trial, an order, of which the following is
40 a copy, was made by the court.

"U. S. circuit court.

"ORLANDO PERRINE
"*ag'st*
"THE TOWN OF THOMPSON, IN THE COUNTY of Sullivan. } Two causes, Nos. 80 & 80½ on the calendar of this court, April 25th, 1879.

"The above causes having been reached in their regular order on the calendar, it is hereby stipulated that the evidence in both causes shall be taken together; that the evidence, objections, and exceptions taken, shall be regarded as the evidence, objections, and exceptions in each cause.

"Dated April 25th, 1879.

"JAMES K. HILL,
"WING & SHOUDY,
"*Pl'ff's Att'ys.*
"T. F. BUSH,
"*Def't's Att'y.*

"Ordered accordingly.

"WM. J. WALLACE."

41 Upon the trial the following testimony was taken, and proceedings had:

Plaintiff offered in evidence the laws of the State of New York, as follows:

Laws of 1868, chap. 553; laws of 1869, chap. 96; laws of 1871, chap. 809; of which said several acts the following are copies:

42 CHAPTER 553.

An act to authorize certain towns, in the counties of Sullivan and Orange, to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County.

Passed May 4, 1868, three-fifths being present, without the approval of the governor.*

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. On the application, in writing, of twelve or more freeholders, residents of any town or incorporated village, in either of the counties of Sullivan or Orange, situated along the route of the railroad from Monticello, in the said county of Sullivan, to Port Jervis, in the county of Orange, it shall be the duty of the county judge of the county in which such town or incorporated village is situated, within ten days after receiving such application, to appoint, under his hand and seal, not more than three freeholders, residents of said towns or incorporated villages respectively, to be commissioners thereof, to carry into effect the purposes and provisions of this act, who shall hold their offices respectively for the term of two years, and until others shall be appointed.

§ 2. It shall be lawful for said commissioners to borrow, on the faith and credit of their respective towns and villages aforesaid, such sum of money, not exceeding thirty-three per cent. of the valuation of said town, to be ascertained by the assessment rolls thereof, respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor under their hands and seals respectively. The bonds so to be executed may be in such sums, and payable at such times and places, not exceeding thirty years, and in such form as the said commissioners and their successors may deem expedient; but no such debt shall be contracted, or bonds issued by said commissioners, of or for either of said towns or villages, until the written consent shall have been obtained of a majority of the taxpayers of such town or incorporated village, or their legal representatives, appearing upon the last assessment roll, as shall represent a majority of the taxable property (not including lands owned by non-residents) appearing upon the last assessment roll of such town, nor until an amount of the capital stock of said road shall have been subscribed and paid for by individuals or corporations, equal to fifteen per cent. of all amounts of town bonds issued, or to be issued, in aid of said railroad under this act; such consent shall state the amount of money authorized to be raised in such town or village, and the railroad company in the stock of which said money shall be invested, and shall be proved or acknowl-

*Pursuant to the last clause of section nine, article four, of the constitution of the State of New York.

edged in the same manner as conveyances of real estate. The fact that the persons signing said consent are such majority of the taxpayers of said town or village, and represent a majority of the taxable property of such town or village, not including lands owned by non-residents, shall be proved by the affidavit of one of the assessors, or the town clerk of such town, endorsed upon or annexed to such written consent, and the assessor or town clerk of such town is hereby required to perform such service. Such consent and affidavit shall be filed in the office of the clerk of the county in which such town or village is situated, and a certified copy thereof in the town clerk's office of such town, and the same, or a certified copy thereof by the county clerk, shall be evidence of the facts therein contained, and certified in any court of this State, and before any judge or justice thereof.

§ 3. The said commissioners authorized by this act may, in their discretion, dispose of such bonds or any part thereof, to such persons or corporations, and upon such terms as they shall deem most advantageous for their said town, but not for less than par, and the money that shall be raised by any loan or sale of such bonds shall be invested in the stock of such company now organized, or that may hereafter be organized, within two years after the passage of this act, for the purpose of building, or aiding in the building of a railroad from the village of Monticello, through the towns of Thompson, Forestburgh, and Deerpark, to Port Jervis, in the county of Orange; and said money shall be applied and used in the construction of such road as aforesaid, its buildings and necessary appurtenances, and for no other purpose. The commissioners, respectively, in the corporate name of each of their said towns or villages aforesaid, may subscribe for and purchase stock of such company to the amount they may have severally borrowed, as aforesaid, and by virtue of their said subscription or purchase of stock, and upon receiving certificates or the transfer of certificates for the amount of said stock so subscribed for and purchased by them, the said towns or villages shall acquire all the rights and privileges, and be liable to the same responsibilities as other stockholders of said company; and it shall be lawful for the commissioners provided for in this act, or either of them, with the consent of the others, or a majority of said commissioners, to participate in and to act in all the regular and legally authorized meetings of the stockholders, and either of them may act as directors of such company, if he shall be duly elected as such.

§ 4. The said commissioners, respectively authorized by this act, shall report to the board of supervisors of their respective counties within three days after the commencement of their regular annual meeting in each year, the amount required to pay principal or interest, if any, on the said bonds authorized to be issued under and by virtue of this act, due or to become due and payable during the next ensuing year. The dividends arising from the stock so subscribed for and purchased by said town or village, in pursuance of this act, or so much thereof as may be necessary, shall be received by said commissioners, and by them applied to the payment of the interest which shall, from time to time, accrue upon the bonds authorized by this act, and in case such dividends shall not be found sufficient in any one or more years
43 to pay the principal or interest accruing on said bonds due and to become due as aforesaid, it shall be, and is hereby, made the duty of the said board of supervisors, and they are hereby authorized and required to cause to be assessed and levied and collected of the real and personal property of said towns, at the same time and in the same manner as other taxes are assessed, levied, and collected, such

sum or sums of money as shall have been reported to said board of supervisors by the said commissioners authorized by this act, to be necessary to make good such deficiency in the payment of the said principal or interest on the said bonds, and the same, when collected, shall be paid to said commissioners respectively, and by them applied to the payment of the principal and interest on said bonds, or so much thereof as shall remain unpaid after the application of said dividends to that purpose.

§ 5. It shall be lawful for such railroad company to agree with the said commissioners, respectively, in behalf of their said town or village, to pay the annual interest accruing on the bonds issued by said towns or villages for the term of three years, or until such railroad shall be completed and in operation. The amount of such interest to be repaid by the said commissioners to such company within three years after said road shall have been opened and put in operation, in equal annual installments, to be levied and raised in the same manner as provided by this act for paying the annual interest accruing on said bonds, or by the sale of the stock as herein provided, in case the dividends or income from the stock held by such towns and villages, or either of them, shall be insufficient for the purpose.

§ 6. The said commissioners, appointed under and by virtue of this act, may, at any time after acquiring such capital stock, exchange the same, in whole or in part, for the bonds issued under the authority of this act; and in such case they shall cancel the bonds so received by them, or they may dispose of such stock, in their discretion, to any purchaser or purchasers for cash; but shall not sell or dispose of such stock at less than par, except at public sale, of which twenty days' notice shall be given in two newspapers published in their respective counties. But no such sale shall be made, except by consent obtained to the extent and in the manner provided in the second section of this act. And in case of sale of said stock, either at public or private sale, the proceeds thereof shall be applied by said commissioners, respectively, to the purchase or redemption of the bonds authorized to be issued by this act, and for no other purpose.

§ 7. After thirty years from the passage of this act, it shall be, and is hereby, made the duty of the said board of supervisors, and they are hereby authorized, unless the payment of the said bonds is otherwise provided for, to cause to be assessed, levied, and collected on the real and personal property of each of said towns or villages, at the time and in the manner as other taxes are assessed, levied, and collected, the sum due on the said bonds so issued in pursuance of this act, together with the interest on said principal sum, or so much thereof as may remain unpaid by reason of the deficiency of the dividends and sale arising from the said stocks. The amount so to be raised by the said board of supervisors for the payment of the principal or interest, shall be determined by the report of said commissioners respectively, to the said board of supervisors, as hereinbefore authorized by this act.

§ 8. The said commissioners may also provide, within five years from the time of issuing said bonds, for the annual payment of at least five per cent. of the same, so as to insure the final liquidation of said bonds within thirty years after their date, and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said towns or villages over the amount necessary to pay the annual interest on said bonds; and if the amount of such surplus dividends is not sufficient for the annual payment of the said five per cent., and the said commissioners shall not have received sufficient from the sale of

stock, as herein provided, to pay the same, then the deficiency shall be reported by the said commissioners to the board of supervisors, to be levied and raised annually, in the manner herein provided, for paying the interest on said bonds.

§ 9. Before the said commissioners, or either of them, shall enter upon the discharge of their duties under this act, they shall jointly and severally, with two or more sureties, execute to the supervisor of their respective towns, or the trustees of any such incorporated village respectively, a bond, in the penal sum equal to the amount of bonds issued by said towns or villages under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act, and for the just and honest application by them of all moneys, stocks, or bonds issued by them or coming into their hands, according to the true intent and meaning of this act. The sufficiency of said sureties shall be determined by the county judge of the county in which such town or village is situated, to be endorsed on said bonds. The said bonds shall immediately thereafter be deposited with the supervisor of each of said towns, or trustees of such village, to be collected by him or them, or his or their successors in office, for the use and benefit of said town or village, in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bond collectable.

§ 10. In case a vacancy shall happen, by reason of death, removal from office, or from said town, resignation, or refusal to serve of either of said commissioners provided for in this act, the vacancy shall be filled by the remaining commissioners of the town or village in which the vacancy so exists, by appointment in writing to be deposited with the supervisor of said town. Each and every person thus appointed shall, before he enters upon the discharge of his duties, execute and deliver to said supervisor a bond in like amount, with like conditions and securities, as hereinbefore provided; and all provisions of this act shall apply to the successors of the commissioners provided for in this act, whose powers and duties and liabilities shall be the same as those of the commissioners first appointed under this act. Any commissioner may be removed for cause shown, by the county judge of the county in which he was appointed, and upon such notice being given as said county judge may direct. No removal shall be made unless on the application of twelve freeholders of the town or village in and for which such commissioners shall be acting.

§ 11. Each of said commissioners shall receive the sum of three
44 dollars per day for each day actually engaged in the discharge of his duties under this act, and his necessary disbursements, to be audited and paid by the said town or village, the same as other town or village charges and expenses.

§ 12. The commissioners in each of said towns or villages shall constitute a board to act for these said towns or villages respectively, and a majority of said commissioners, in each of said boards, shall constitute a quorum to do any business authorized by this act. Such boards shall respectively keep a detailed record of all their proceedings, which record shall, at all times, be open to the inspection of any tax-payer in their town or village; and *and* also the holder of any bond issued by said commissioners under this act.

§ 13. On the expiration of the term of office of either of the commissioners provided for in this act, or of their successors, his place shall be filled in the manner provided in the first section of this act. And the commissioners so appointed, as well as those to be appointed under the

tenth section of this act, shall be freeholders of the town for which they are to act as such commissioners.

§ 14. All bonds issued in accordance with the provisions of this act, shall be registered in the office of the county clerk of the county in which the town or village issuing the same is situated, and the words "registered in the county clerk's office," shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bond shall be so valid unless so registered.

§ 15. It shall be lawful for said railroad company now organized, or to be organized under the laws of this State, in the construction of said railroad, to use in operating said road a rail not less in weight than forty pounds to the lineal yard.

§ 16. This act shall take effect immediately.

CHAPTER 96.

An act to amend an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May fourth, eighteen hundred and sixty-eight.

Passed April 2, 1869; three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section two of chapter five hundred and fifty-three of the laws of eighteen hundred and sixty-eight, is hereby amended so as to read as follows:

§ 2. It shall be lawful for said commissioners to borrow, on the faith and credit of their respective towns and villages aforesaid, such sum of money not exceeding thirty-three per cent. of the valuation of said town, to be ascertained by the assessment-rolls thereof respectively for the year eighteen hundred and sixty-seven, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefore under their hands and seals respectively. The bonds so to be executed may be in such sums and payable at such times and places not exceeding thirty years, and in such form as the said commissioners and their successors may deem expedient; but no such debt shall be contracted or bonds issued by said commissioners of or for either of said towns or villages, until the written consent shall have been obtained of a majority of the tax-payers of such town or incorporated village, or their legal representatives, appearing upon the last assessment-roll, as shall represent a majority of the taxable property, not including lands owned by non-residents, appearing upon the last assessment-roll of such town, nor until an amount of the capital stock of said road shall have been subscribed for in good faith by individuals or corporations equal to fifteen per cent. of all amounts of town bonds issued, or to be issued in aid of said railroad under this act, and ten per cent. thereof paid; such consent shall state the amount of money authorized to be raised in such town or village, and the railroad company in the stock of which said money shall be invested, and shall be proved or acknowledged in the same manner

as conveyances of real estate. The fact that the persons signing said consent as such majority of the tax-payers of said town or village, and representing a majority of the taxable property of such town or village, not including lands owned by non-residents, shall be proved by the affidavit of one of the assessors, or the town clerk of such town indorsed upon or annexed to such written consent, and the assessor or town clerk of such town is hereby required to perform such service. Such consent and *and* affidavit shall be filed in the office of the clerk of the county in which such town or village is situated, and the certified copy thereof, in the town clerk's office of such town, and the same, or a certified copy thereof by the county clerk, shall be evidence of the facts therein contained and certified, in any court of this State and before any judge or justice thereof.

§ 2. This act shall take effect immediately.

CHAPTER 809.

An act to legalize and confirm the acts of the commissioners of the towns of Thompson and Forestburgh, in the county of Sullivan, and of Deerpark, in the county of Orange, in issuing and disposing of the bonds of their respective towns, to build a railroad from the village of Monticello, in the county of Sullivan, to the village of Port Jervis, in the county of Orange, under chapter five hundred and fifty-three of the laws of eighteen hundred and sixty-eight, and to legalize and confirm all bonds heretofore issued by such commissioners under said chapter of laws now held by or owned by bona-fide purchasers.

Passed April 28, 1871; three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The acts of Nathan S. Hamilton, Giles M. Benedict, and William H. Cady, commissioners on the part of the town of Thompson, and Silas T. L. Norris, Edwin Hartwell, and James Ketcham, commissioners of the town of Forestburgh, in the county of Sullivan, and of Orville J. Brown, Samuel O. Dimmick, and Augustus B. Goodale, commissioners of the town of Deerpark, in the county of Orange, appointed in pursuance of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis," passed May fourth, eighteen hundred and sixty-eight, in issuing bonds upon the faith and credit of their respective towns, and in exchanging them for the stock of the company, organized for the purpose of constructing the railroad contemplated by said act, are hereby ratified and confirmed.

§ 2. No bond or bonds issued, or purporting to have been issued, under the said act, and now held, owned, or possessed by any person or persons, guardian, trustee, or corporation, in good faith, or for a valuable consideration, shall be void or voidable by reason of any defect or omission in the consents in writing of the tax-payers of the said towns of Thompson, Forestburgh, and Deerpark, upon which such bonds were or purport to have been issued, in or by reason of said consents not stating the name of the railroad company in which the tax-payers so

signing such consents desired the bonds or the money arising from the sale thereof to be invested. But that the said bonds shall be as valid and effectual for every purpose as if such defect or omission had not occurred, provided, that such or any exchange of bonds by said commissioners for the stock of said company was made at the par value of the said bonds; and, provided, further, that the respective issues of the said bonds by their commissioners do not exceed the amount authorized by said act.

§ 3. No action or proceeding at law, commenced or pending at the time of the passage of this act, shall abate or be discontinued, or be in any way affected by reason thereof; but the same may be prosecuted or defended, and judgment entered therein, and all proceedings taken to enforce the same, in the same manner as now provided by law, and with like effect as if this act had not been passed.

§ 4. This act shall take effect immediately.

46 Plaintiff offered in evidence a judgment-roll in an action tried in this court between the parties in May, 1878.

Defendant objected to the roll being received in evidence on the ground that it was immaterial & incompetent evidence. The court overruled the objection and admitted the judgment-roll in evidence. To which ruling the defendant excepted. The following is a copy of the judgment-roll:

47 U. S. circuit court, for the southern district of New York in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1878, to wit, of the 22 day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Witness, the honorable Samuel Blatchford, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the first day of May, 1876, in April term , before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Orlando Perrine, by James K. Hill, his attorney, and brought into the said court, before the aforesaid judges thereof, then there, his certain declaration against the Town of Thompson in the County of Sullivan, &c., of a plea of trespass on the case upon promises, which said declaration follows in these words, that is to say:

48 *Capias.*

The President of the United States of America to the marshal of the southern district of New York, greeting:

We command you that you summons Thown of Thompson in the County of Sullivan, State of New York, defendant, if it shall be found in your district, and it safely keep, so that you may have its body before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, to be held at the United States court and post-office buildings, City Hall Park, in

the city of New York, in the said southern district, on the 2d day of August, 1875, to answer unto Orlando Perrine, plaintiff, in a plea of trespass; and also to a certain bill of the said plaintiff against the said defendant for five thousand one hundred & forty-five dollars, and interest on coupons of bonds issued by the defendant, according to the custom of the said court, before the said judges, then and there to be exhibited, and that you have then there this writ:

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, the 27th day of July, in the year one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

KENNETH G. WHITE, *Clerk.*

JAMES K. HILL,
Pl'ff's Attorney, 62 Wall st., New York City.

49 I hereby certify that on the 31 day of July, 1875, at Thompson, Sullivan Co., New York, in my district, I personally served the within summons upon the within-named Town of Thompson, by exhibiting to Charles T. Kilbrom, supervisor of said town, the within original, and at the same time leaving with him a copy thereof.

Dated August 2d, 1875.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

Filed Aug. 2, 1875. U. S. marshal.

I hereby Louis A.

OLIVER FISKE,
U. S. Marshal.

(Indorsed:) U. S. circuit court for the southern district of New York. Orlando Perrine vs. Town of Thompson. Capias ret. , 18 . att'y. I hereby depute to execute the within writ.

Dated , 18 . , U. S. marshal. Filed August 2, 1875.

50 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

Orlando Perrine, plaintiff in this suit, by James H. Hill, his attorney, complains of the Town of Thompson, in the County of Sullivan, in the State of New York, defendant, and avers:

First. That the plaintiff is a resident of the State of New Jersey, and that the defendant is a corporation, duly created under and by virtue of the laws of the State of New York, and was and is a town in the county of Sullivan, in the State of New York, and in the southern district of said State.

Second. That on the fourth day of May, 1868, the legislature of the said State of New York passed an act, which became a law, entitled "An act to authorize certain towns in the counties of Sul-

51

van and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County."

That in and by said act of the legislature the Town of Thompson was authorized in substance and effect to aid in the construction of a railroad, and to issue bonds through commissioners to be appointed for that purpose.

That said act is chapter 553 of the laws of the State of New York for 1868, and the plaintiff prays leave to refer to the same as a part of this complaint, with like effect as if said act was fully set out and incorporated herein.

52 That on the second day of April, 1869, the legislature of the said State of New York duly passed another act, which also became a law, entitled "An act to amend an act entitled 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May fourth, eighteen hundred and sixty-eight.'"

That the said last-mentioned act is chapter 96 of the laws of the State of New York for 1869, and the plaintiff prays leave to refer to the same as a part of this complaint, with like effect as if said last-

53 mentioned act was fully set out and incorporated herein.

Third. That afterwards, and in pursuance of the aforesaid acts of the legislature, Giles M. Benedict, Nathan S. Hamilton, and William H. Cady were duly appointed commissioners for the said Town of Thompson to carry into effect the purposes and provisions of the said acts of the legislature, and that they subsequently duly qualified and entered upon the discharge of their duties as such commissioners.

Fourth. That the said commissioners afterwards, and on or about the fisrt day of May, 1869, in pursuance of the said acts of the legislature, duly executed and issued one hundred and forty-eight bonds of one thousand dollars each, numbered from 1 to 148, both inclusive, in the following form:

"No. .] United States of America. [$1,000.00

54 "Town of Thompson, State of New York, County of Sullivan.

"This bond is a valid security, being issued by virtue of an act entitled 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May fourth, eighteen hundred and sixty-eight, and of the act amendatory thereof, passed April first, eighteen hundred and sixty-nine.' Know all men by these presents that the Town of Thompson in

the County of Sullivan, and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the acts
55 above entitled and referred to, and for value received in the stock of the Monticello and Port Jervis Railway Company, promises to pay the bearer the sum of one thousand dollars on the first day of March, in the year one thousand eight hundred and ninety-nine, at the National Union Bank of Monticello, N. Y., with interest at seven per cent. per annum, payable semi-annually on the first day of March and September, in each year, at the Hanover National Bank of the city of New York, on the presentation and surrender of the coupons for such interest.

"In witness whereof we have hereunto set our hands and seals, and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this first day of May, in the year one thousand eight hundred and sixty-nine.

(Signed) "G. M. BENEDICT,
"N. S. HAMILTON,
"W. H. CADY,
"*Commissioners.*

56 "Registered in the county clerk's office of the county of Sullivan, this first day of May, 1869.

"C. L. MORRIS,
"*County Clerk.*"

Fifth. That annexed to each of the said bonds at the time of its issue was a series of fifty-nine coupons, signed by said W. H. Cady, one of the said commissioners, whereby the said Town of Thompson promised and undertook to pay to the bearer thereof the interest on such bond.

That the said bonds and coupons upon their being issued passed into possession of and became the property of various persons and corporations in good faith and for a valuable consideration.

Sixth. That afterwards, and on the twenty-eighth day of April, 1871, the legislature of the State of New York passed an act, which be-
57 came a law, legalizing and confirming the acts of the said Nathan S. Hamilton, Giles M. Benedict, and William H. Cady, as commissioners, in issuing and disposing of the said bonds. That the said last-mentioned act is entitled "An act to legalize and confirm the acts of the commissioners of the towns of Thompson and Forestburgh, in the county of Sullivan, and of Deerpark in the county of Orange, in issuing and disposing of the bonds of their respective towns to build a railroad from the village of Monticello, in the county of Sullivan, to the village of Port Jervis, in the county of Orange, under chapter five hundred and fifty-three of the laws of eighteen hundred and sixty-eight, and to legalize and confirm all bonds heretofore issued by such commissioners under said chapter of laws now held by or owned by bona fide purchasers."

That the said last-mentioned act is chapter 809, of the laws of
58 the said State for the year 1871, and the plaintiff prays leave to refer to the same as a part of this complaint with like effect as if said last-mentioned act was fully set forth and incorporated herein.

Seventh. That the Town of Thompson paid to the respective holders thereof the coupons that became due on the first day of March and September, 1870, and on the first day of March and September, 1871.

Eighth. That afterwards and prior to the commencement of this action the plaintiff purchased, in the open market, at the city of New York, for value, and became the owner of twenty-one of the said bonds, num-

bered as follows, viz: 28, 29, 30, 122, 123, 124, 125, 126, 127, 128, 129, 130, 138, 139, 140, 141, 142, 143, 144, 145, and 146, with the coupons thereunto attached and belonging, and the said bonds and coupons
59 so purchased were delivered to the plaintiff.

Ninth. That annexed to the bond No. 28, at the time of its issue and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and
60 the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said coupon.

Tenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest
61 due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eleventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

62 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on

the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is, the owner and holder of the said last-mentioned coupon.

Twelfth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

63 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

64 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fourteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

65 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

66 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 28.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 29.

67 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventeenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 29.

"W. H. CADY,
"*Commissioner.*"

68 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 29.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was

made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Nineteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 29.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twentieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 29.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d,

4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 29.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that
72 annexed to bond No. 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 29.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

73 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay to the
74 bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

75 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

Twenty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th,

6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly
76 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

77 That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Twenty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the

first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

78 Twenty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 30.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirtieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that an-

79 nexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

80 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
81 on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

82 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has
83 not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been

paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this ac-
84 tion, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 122.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d,
85 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] . [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

86 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Thirty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
87 on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fortieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

88 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has
89 not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this
90 action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-third. The plaintiff, for a separate and distinct cause of action,

repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 123.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th,
91 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at
92 the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 124 at the time of its issue, and accompanying it at the
93 time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this
94 action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last mentioned coupon has been duly
95 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Forty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th,

6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

96 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

97 Forty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was
98 made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fiftieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the
99 bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 124.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th,
100 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

101 That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
102 "*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond

number 125 at the time of its issue, and accompanying it at the
103 time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make and provision for its payment.

That the plaintiff, at the time of the commencement of this
104 action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly
105 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

106 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

Fifty-sixth. The plaintiff, for a separate and distinct cause of
107 action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid,
108 and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 125.

"W. H. CADY,
"*Commissioner.*"

109 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126, at the time of its issue, and accompanying it at the

time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

110 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson have neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Fifty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th, paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

111 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixtieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

112 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

113 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-second. The plaintiff, for a separate and distinct cause of action, repeating *repeating* the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

114 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-third. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th,

and 8th paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

115 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says, that annexed to bond number 126, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

116 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 126.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

117 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New

York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 127.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

118 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 127.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

119 "The Town of Thompson, County of Sullivan, will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 127.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

120 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 127.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Sixty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the
121 bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 127.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
122 on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 127.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 127.

123 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

124 That although the said last-mentioned coupon has been duly presented at the said Hanover National Bank, where it was

made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly
125 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

126 That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128 at the time of its issue, and accompanying

it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

127 Seventy-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that

128 annexed to bond number 128 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

129 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 128.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Seventy-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 129.

130 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eightieth. The plaintiff, for a separate and distinct cause of action,

repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 129.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly
131 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 129.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not
been paid, and the said Town of Thompson has neglected and
132 refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

Eighty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the

first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 129.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

133 Eighty-third. That the plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 129.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighty-fourth. That the plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accom-

134 panying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 129.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this com'laint, further says that annexed to bond number 129 at time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

135 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 129.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff was, at the time of the commencement of this action, *was* and still is, the owner and holder of the said last-mentioned coupon.

Eighty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 130.

136 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 130.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly
137 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 130.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and
138 refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Eighty-ninth. The plaintiff, for a separate and district cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 130.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was

made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

139 Ninetieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 130.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thomps' has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that an-

140 nexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 130.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

141 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 130.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the holder and owner of the said last-mentioned coupon.

Ninety-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the
142 bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

143 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where

it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has
144 not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-sixth. The plaintiff, for a separate, and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this ac-
145 tion, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th,
146 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Ninety-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

147 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 138.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been

paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundredth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
148 on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

149 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has
150 not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this
151 action, was, and still is, the owner and holder of said last-mentioned coupon.

One hundred and fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was

made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

152 One hundred and fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further

153 says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 139.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

154 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is, the owner and holder of the said last-mentioned coupon.

One hundred and eighth. That the plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, county of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on
155 the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY,
"*Commissioner.*"

156 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank,

where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

157 One hundred and tenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of the complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where
158 it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make and provision for its payment.

That plaintiff at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and eleventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
159 on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & twelfth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon,
160 in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

161 One hundred and thirteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 140.

"W. H. CADY.
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not

162 been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

163 One hundred & fourteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made

164 payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fifteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
165 on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & sixteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further
166 says that annexed to bond number 141 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

167 That the plaintiff at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

One hundred & seventeenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141 at the time of its issue, and accom-

panying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, county of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly
168 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & eighteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the
169 bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & nineteenth. The plaintiff, *has* a separate and distinct cause of action, repeating the allegations contained in the 1st, 2rd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this com-
170 plaint, further says that annexed to bond number 141 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that date on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

171 That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & twentieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 141.

"W. H. CADY,
"*Commissioner.*"

172 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner & holder of the said last-mentioned coupon.

One hundred & twenty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, county of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
173 on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & twenty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its

174 issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & twenty-third. The plaintiff, for a separate and
175 distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this
176 action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & twenty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not
177 been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and twenty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

178 That although the said last-mentioned coupon has been duly presented for payment at the said Hanove' National Bank, where it was made payable, and payment demanded, the said coupon had not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner & holder of the said last-mentioned coupon.

179 One hundred & twenty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day September, 1874, thirty-five dollars, for interest due that day on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where
180 it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and twenty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st,

2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,
181 on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 142.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & twenty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, fur-
182 ther says that annexed to bond number 143, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 143.

"W. H. CADY,
"*Commissioner.*"

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of said last-mentioned coupon.

183 One hundred and twenty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof at the Hanover National Bank, of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 143.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where
184 it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirtieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 143.

185 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue,
186 and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

$35.] [$35.

The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 143.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-second. The plaintiff, for a separate and
187 distinct cause of action, repeating the allegations contained in the

1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 143.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to
188 make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 143.

"W. H. CADY,
"*Commissioner.*"

189 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

190 "The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York,

on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 143.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-fifth. The plaintiff, for a separate and
191 distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 144.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of *of* Thompson has neglected and
192 refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 144.

193 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff,
194 was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 144.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

195 One hundred & thirty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer , at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 144.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not
196 been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred and thirty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 144.

197 "W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fortieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon,
198 in *in* the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 144.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

199 One hundred & forty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of the complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 144.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was

made payable, and its payment demanded, the said coupon has not been paid, and the Town of Thompson has neglected and refused to
200 make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

201 One hundred & forty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused
202 to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & forty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioners.*"

203 That although the said last-mentioned coupon has been duly presented for payment at the Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fourty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the of its issue, and

accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the
204 bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioners.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & forty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd,
205 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] $35.]

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

206 That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & forty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioners.*"

207 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & forty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the
208 first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & forty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

209 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 145.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & forty-ninth. The plaintiff, for a separate and distinct

cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further
210 says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] 146. [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

211 One hundred & fiftieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

212 That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fifty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first

day of March, 1873, thirty-five dollars, for interest due that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has
213 not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fifty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

214 That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fifty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, fur' says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due
215 that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fifty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

216 "$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

One hundred & fifty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and
217 accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 146.

"W. H. CADY,
"*Commissioner.*"

That although the said last-mentioned coupon has been duly presented for payment at the said National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

Wherefore the plaintiff demands judgment against the defend-
218 ant for the sum of $5,145, with interest on $735 thereof from the 1st day of March, 1872; on $735 thereof from the first day of September, 1872; on $735 thereof from the 1st day of March, 1873; on $735 thereof from the 1st day of September, 1873; on $735 thereof from the 1st day of March, 1874; on $735 thereof from the 1st day of September,

1874; on $735 thereof from the 1st day of March, 1875; and the costs and disbursements of this action.

JAS. K. HILL,
Plaintiff's Attorney.

SOUTHERN DISTRICT OF NEW YORK:

Orlando Perrine, the plaintiff herein, being duly sworn, says the foregoing complaint is true, of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

ORLANDO PERRINE.

Sworn to before me this 11th day of April, 1876.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

219 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY of Sullivan.

1st. The defendant above named, by F. F. Bush, its attorney, in answer to the plaintiff's complaint herein denies each and every allegation in the said complaint not herein expressly admitted or answered unto.

2d. In further answering, the defendant alleges that this court has not jurisdiction of this action. That the bonds and coupons referred to in the complaint were each and all of them issued without authority in law, and in violation of chapter 553 of the law of New York for 1868, referred to in said complaint, and were defective *defective* and void, as is fully hereinafter set forth. That the same were held and
220 owned by persons residing in the State of New York at the time they were transferred to the plaintiff, and that the plaintiff purchased and took them, and each and every of them, by assignment from said persons, residents of the State of New York, who could not maintain an action thereon in this court. And that the said bonds and coupons were not negotiated to the plaintiff under or by the law-merchant, but that the plaintiff, at the time of the purchase and assignment thereof, had a knowledge of the defects and of the illegal issue of the said bonds hereinafter set forth.

Wherefore the def't alleges that under the provisions of an act of the Congress of the United States, approved March 3rd, 1875, this court has no jurisdiction of this action.

3d. In further answering, the defendant alleges that each and all of the acts of the legislature of the State of New York, referred to in the second item of said complaint, and also the act of the said legisla-
221 ture referred to in the sixth item of the said complaint passed April 28th, 1871, were passed by the said legislature in violation of the provisions of the constitution of the State of New York, and are therefore unconstitutional and void, and that all proceedings had under the said several acts are void and of no effect.

4th. In further answering, the defendant specifically denies that Nathan S. Hamilton, William H. Cady, and Giles M. Benedict, or any of them, were ever appointed commissioners of the said Town of Thompson under the provisions of said acts. Also denies that the said al-

leged commissioners, or any of them, had any authority to issue the bonds of the said Town of Thompson. Also denies that the bonds and coupons referred to in the complaint were issued by the procurement, consent, or with the knowledge of this defendant. Also denies that the defendant in any manner ever ratified or confirmed the issue
222 of the said bonds, either by the payment of interest thereon or in any other manner.

5th. In further answering, the defendant alleges that in and during the year 1869 the said Giles M. Benedict, Nathan S. Hamilton, and William H. Cady, assuming to act as commissioners of the said town, but without a shadow of authority therefore, did execute the bonds set forth in the complaint; that at the time they so executed the same the consents of the tax-payers of the said town had not been obtained and filed in conformity to the said act of the legislature of the State of New York, and that the said pretended commissioners issued the said bonds and exchanged them for the stocks of the Monticello and Port Jervis Railroad Co., and did not sell them for cash and at par, as required by the provisions of the said act of the legislature of the State of
223 New York passed May 4th, 1868, and of which illegal issue the p'l'ffs had knowledge.

6th. In further answering, the defendant alleges that each and every of the said bonds and coupons issued as aforesaid by the said pretended commissioners, including the bonds and coupons referred to in the complaint, were adjudged void and of no effect, and the stock of the said R. R. Co. which was subscribed for by the said commissioners was cancelled and surrendered to the said R. R. Co. by a judgment of the supreme court of the said State of New York, in an action in which the people of the said State were parties plaintiffs, and brought by the attorney-general of said State, against Giles M. Benedict & others, commissioners, &c., and ag'st the said Town of Thompson and others; the judgment-roll whereof was filed and the decree entered and judgment docketed in the clerk's office of the county of Sullivan, in the said State
224 of New York, on the 4th day of December, 1872.

7th. In further answering, the defendant admits that it is one of the towns in the county of Sullivan, State of New York.

Wherefore, the defendant demands that the said complaint be dismissed with costs.

F. F. BUSH,
Attorney for Def't.

STATE OF NEW YORK,
Sullivan County, ss:

Charles T. Kilbourne, of said county, being duly sworn, says that he is the supervisor of the Town of Thompson, in the County of Sullivan, and that the foregoing answer is true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

C. T. KILBOURNE.

Subscribed & sworn before me this 10th day of June, 1876.

L. N. STANTON, [L. S.]
County Clerk, Sull. Co., N. Y.

(Endorsed:) U. S. circuit court. Orlando Perrine ag'st The Town of Thompson. Def't's answer. F. F. Bush, def't's att'y, Monticello, N. Y. Filed June 20, 1876.

225 United States circuit court for the southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan and State of New York.

Judgment.

The issues in this action having been brought on for trial before Mr. Justice Shipman and a jury, at a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York, on Wednesday, the twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and the issues having been tried, and a verdict for the plaintiff having been duly rendered by direction of the court on the twenty-second day of May, 1878, and the plaintiff's costs having been adjusted by the clerk of the
226 court at the sum of one hundred and thirty-eight $\frac{16}{100}$ dollars:

Now, on motion of James K. Hill, plaintiff's attorney, it is adjudged that the plaintiff, Orlando Perrine, recover of said defendant, The Town of Thompson, in the County of Sullivan and State of New York, six thousand eight hundred and forty-six and $\frac{70}{100}$ dollars found by the jury, with one hundred and thirty-eight and $\frac{16}{100}$ dollars costs, and one hundred and twenty-seven and $\frac{79}{100}$ dollars interest on the verdict, making in all the sum of seven thousand one hundred and twelve $\frac{65}{100}$ dollars, and that he have execution therefor.

Judgment signed this 29th day of August, A. D. 1878.

J. M. DEUEL,
Dep'ty Clerk.

Verdict	6,846 70
Costs	138 16
Interest on verdict	127 79
	$7,112 65

(Endorsed:) U. S. circuit court, southern district of New York. Orlando Perrine against The Town of Thompson. Judgment record.
327 James K. Hill, pl'ff's att'y, No. 37 & 39 Wall st., N. Y. U. S. circuit court. Filed Aug. 29th, 1878. John I. Davenport, clerk.

A copy.
[SEAL.] JOHN I. DAVENPORT, *Clerk.*

228 WILLIAM H. CADY was sworn as a witness for the plaintiff, and testified as follows:

I reside in Monticello, in the town of Thompson, in the county of Sullivan. I was one of the commissioners appointed for bonding the said town; the other commissioners were Nathan S. Hamilton and Giles M. Benedict, both since deceased. We three acted as the first board of commissioners.

The order appointing these commissioners was offered and read in evidence, and it was conceded by defendant's counsel that the three persons named were regularly appointed commissioners under the statutes read in evidence.

Q. Did the three persons named execute any bonds?

(Objected to, on the ground that there is no evidence that those three persons named had any authority to act in the matter.

229 Objection overruled and exception taken.)

A. We did; they were designated by numbers from No. 1 to No. 148, inclusive. We issued 148 bonds.

Q. Of what amount were these bonds?

(Objected to, on the ground that the bonds must be produced, and that they speak for themselves, and are the best and only evidence.

Objection overruled and exception by defendant.)

A. For $1,000 each. These were the only bonds issued by us.

(Counsel for the defendant objects to the evidence, and said, "We claim that the commissioners did not execute any bonds; that these instruments were not executed in conformity to the statute. They were not sealed, and the plaintiff should produce the bond in court as evidence."

230 The court held that the plaintiff should produce one of the bonds as a sample.

Plaintiff's counsel here produced and showed the witness one of the bonds.)

Q. Is that one of the bonds?

A. Yes, sir; one of the bonds of which I have spoken.

Q. Were they all in that form?

A. They were all in that form. Fifty-nine coupons were attached to each bond at the time of its issue. The first coupon came due in March, 1870, and then they became due on the first of each succeeding September and March; they were for $35 each.

(Counsel for plaintiff offered the bond in evidence; to which counsel for defendant objected as before. The court overruled the objection and admitted the bond in evidence; to which ruling defendant excepted.)

231 The following is a copy of the bond:

"No. .] UNITED STATES OF AMERICA.

"STATE OF NEW YORK, COUNTY OF SULLIVAN, TOWN OF THOMPSON.

"$1,000.]

"This bond is a valid security, being issued by virtue of an act entitled 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County,' passed May 4th, eighteen hundred and sixty-eight, and of the acts amendatory thereof, passed April 1st, eighteen hundred and sixty-nine.

232 "Know all men by these presents, that the Town of Thompson, in the County of Sullivan and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the acts above entitled and referred to, and for value received in the stock of the Monticello and Port Jervis Railway Company, promises to pay the bearer the sum of one thousand dollars on the 1st day of May, in the year one thousand eight hundred & ninety-nine, at the National Union Bank of Monticello, N. Y., with interest at seven per cent. per

annum, payable semi-annually, on the 1st day of March and September in each year, at the Hanover National Bank of the city of New York, on the presentation and surrender of the coupon for such interest.

"In witness whereof we have hereunto set our hands and seals, and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this 1st day of May, in the year one
233 thousand eight hundred and sixty-nine.

"G. M. BENEDICT,
"N. S. HAMILTON,
"W. H. CADY,
"*Commissioners.*

"Registered in the county clerk's office of the county of Sullivan this first day of May, 1869.

"C. L. MORRIS,
"*County Clerk.*"

Q. What disposition did the commissioners make of the bonds?
A. They were given to the railroad company in exchange for their capital stock at their par value for the same amount of stock, the amount of stock being equal, to the amount of bonds, and these are the receipts we received from the company:

"OFFICE OF THE MONTICELLO &
"PORT JERVIS RAILWAY CO.,
$15,000.] "*Port Jervis, May 4th*, 1869.

234 "Received from Giles M. Benedict and William H. Cady, commissioners of the Town of Thompson, fifteen thousand dollars in bonds of said town, issued in aid of the construction of this road, said bonds numbered 1 to 15 inclusive, & of one thousand dollars each.
Dated May 1st, 1869.

"FRANCIS S. MARVIN,
"*Treasurer.*"

[U. S. revenue stamp cancelled.]

"OFFICE OF THE MONTICELLO &
"PORT JERVIS RAILWAY CO.,
$133,000.] "*Port Jervis, N. Y., May 12th*, 1869.

"Received from Giles M. Benedict, Wm. H. Cady, and Nathan S. Hamilton, commissioners of the Town of Thompson, one hundred and thirty-three thousand dollars in bonds of said town, issued in aid of the construction of this road, said bonds numbered sixteen to one hundred and forty-eight inclusive, of one thousand dollars each, and dated May 1st, 1869.
"For the company.
235 "E. W. FAIRCHILD,
"*Ass't Treasurer.*"

[U. S. revenue stamp cancelled.]

Witness continued. The 369 coupons shown me in action No. 2 are the same that were attached to the bonds we issued; they are from bonds numbered 28, 29, 30, 122 to 130 inclusive, 138 to 146 inclusive.

These are the identical bonds, the coupons of which were in the first suit; they are also the coupons from numbers 72 to 76 both inclusive; also from numbers 2, 3, 4, 14, 15, 17, 18, 21, 22, 23, 31, 32, 33,

34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 54, 55, 56, 64, 65, 66, 67, 68, 69, 70, 71, 77, 78, 79, 94, 95, 96, 97, 98, 100, 131, 132, 133, 134, 135, 136, and 137; also from numbers 5, 6, 7, 8, 9, 10, 11, 12, 13, 101, 102, 103, 104, 105, 106, 107, 109, 110, 111, 112, 113, 114, 115, 117, 118, 119, 120, 121, 40, 59, and 99.

Mr. HILL. It is conceded that these coupons amount to $12,915, and the interest up to this date amounts to $4,038.57.

236 The 254 coupons now shown me in action No. 3 are from bonds numbered 19, 20, 26, 41, 49, 57, 58, 3, 14, 15, 69, 78, 97, 98, 131, 132, 133, 134, 135, 136, 137, and 99; they were attached to the bonds of which I have spoken; they amount in the aggregate to $8,890, and interest up to date is $2,375.30.

Q. Was this railroad built from Port Jervis to Monticello?

(Defendants objected on the ground that the evidence was immaterial.

The court overruled the objection.)

A. Yes, sir; and has been running ever since. I was a director in the road.

Q. What did the railroad company do with the bonds?

A. They were used in their contracts with the contractors; the contractors took the bonds at par. The contractors took the bonds

237 in payment at their par value for work done for the company. The road went into operation the 1st of January, 1871; it is now operated by an entirely different company from the one to whom these bonds were delivered. I cannot state the precise date that these bonds were delivered to the contractors; they were turned over very soon after they were delivered to the railroad company. They were given to the contractors in installments; they were the first money used in constructing the road. Francis Marvin was treasurer of the company. The bonds were delivered to Mr. Fairchild, the assistant treasurer of the R. R. company, to pass over to Mr. Marvin as they were needed.

Q. Was that the understanding between Fairchild and the commissioners, that he should hold the bonds as assistant treasurer until called for from time to time to be used?

A. Yes, sir.

238 Q. Do you know the fact that these bonds were transferred in several different parcels through the season of 1869, between the months of May and October, by Fairchild to Marvin?

A. I have that understanding. I had nothing to do with the transaction.

Q. As a director of that road, you understood that to be the manner in which they were delivered?

A. I understand they were delivered in parcels from the assistant treasurer to the treasurer. This is the agreement between the railroad company and the contractor. Plaintiffs offers and reads the same in evidence.

239 *Specification.—M. & P. J. R. R.*

Article of agreement made and concluded this eleventh day of March, in the year one thousand eight hundred and sixty-nine, between William D. Colt, of Washington City, D. C., Charles Colt, of Philadelphia, Pa., and Frederick C. Crowley, of Westport, N. Y., parties of the first part, and the Monticello & Port Jervis Railway Company, by Osman B. Wheeler, their president, duly authorized and empowered by a

resolution of the board of directors of said company, adopted at a meeting held on the 11th day of March inst., party of the second part, whereby it is covenanted and agreed as follows, to wit:

The aforesaid parties of the first , and in consideration of the sum of seven hundred and eighteen thousand seven hundred and fifty dollars, to be to them paid by the said party of the second part, as hereinafter
240 mentioned, hereby covenant and agree to construct and in every respect complete the grading, bridging, masonry, and superstructure, including the furnishing of all, except as hereinafter mentioned, the materials requisite and necessary for doing, performing, and completing a railroad of a single track from a point on the Erie Railway at or near the switches two thousand feet east of the depot of the Erie Railway, in the village of Port Jervis and town of Deerpark aforesaid, through the town of Deerpark aforesaid, and towns of Forestburgh and Thompson, to the north line of the lands near the village of Monticello, in said town last mentioned, now occupied by James Turner, and on or near the line and route just surveyed by Francis C. Cunningham, from the Erie Railway by the way of Hug'enot, Rose's Point, Wheeler's Meadow flats at Oakland, and Hartwood, or Froster's, to Monticello aforesaid,
241 and which line or route shall be more particularly defined and adopted by the said party of the second part, and a map thereof, properly indicating the same, shall be duly furnished to the said parties of the first part. And also to construct and in every respect complete the requisite switches, not exceeding five thousand feet in length, cattle-passes, cattle-guards, switch-signals, water-tanks, depot buildings and platforms, and all the fencing on each and either side of said road, and one turn-table and one engine-house, including the furnishing of all the materials requisite and necessary for the doing and completing the whole and every part of such general structures and department of works, excepting as hereinafter mentioned, in such a manner as will conform in every respect to the specifications and conditions following, to wit:

SPECIFICATION.

242 First. The work shall be commenced as soon as practicable after the execution of these presents, and shall be complete' on or before the first day of June, in the year one thousand eight hundred and seventy, and to this end the said party of the second part shall proceed with all reasonable speed to secure the necessary right of way for said road, and shall put the said parties of the first part into the possession of each and every part thereof at the earliest day possible.

GRADUATION.

2. Under this head will be included all excavations and embankments required for the formation of a road-bed for a single track, and all necessary turnouts; also, the preparation of all such depot-grounds, sites for water stations, &c., as shall be required by the engineer, the digging of all ditches or drains about or contiguous to the road *the road*, the foundations for masonry, changing the direction of streams, and
243 all excavations and embankments necessary for reconstructing turnpikes and common roads, in cases where they are destroyed or interfered with in the formation of the railroad, and all other excavations or embankments connected with or incident to the construction of said railroad.

3. The road shall be graded for a single track, except when otherwise directed by the engineer, with side slopes of such inclination as the engineer shall in each case designate and conformity to such breadths and depths and slopes of cuttings and fillings as may have been or may be hereafter determined by said engineer.

4. The surface of the road when finished ready for the track shall, except when the engineer shall otherwise direct, be fourteen feet wide on embankment and eighteen feet wide in excavation. The surface of the road-bed when finished, track laid, and ballasted shall be twelve
244 feet wide. The ballasting shall consist of free sand or gravel to the depth of at least twelve inches; the sand or gravel required for ballasting the road-bed shall be taken from such place or places on the line of the road or adjacent thereto, within the limits or boundaries of said R. R., as the engineer shall designate.

5. All clearing, grubbing, ditching, &c., that may be required on the sides of the excavations, embankments, depots, grounds, &c., shall be done and the trees and other rubbish shall be removed to such a distance and disposed of in such a manner as the engineer may direct; and in reference to grubbing it is understood that all roots, stumps, &c., found on the sides of the embankments, when not more than one foot below ground, shall be grubbed up and removed beyond the limits of the embankment.

6. The earth, gravel, and other materials taken from the excavations upon any section shall be used and applied in the formation of
245 embankments on the same section, and when the quantity of materials taken from any excavation shall be greater than that required to make the embankment of the usual width, the surplus shall be deposited on one or both sides of the embankments in such a manner as the engineer shall direct. In case where the quantity of materials taken from the excavations upon any section shall not be sufficient for the formation of the requisite embankments, the deficiency shall be supplied by materials taken from the adjacent grounds, at such places as the engineer may designate, or from an enlargement of the excavation made equally *equally* and conformly on one side or on both sides of the same, or in such other manner as the engineer shall deem necessary and proper, and the sides of the excavations in all such cases shall be dressed off to such a shape as the engineer shall require.

7. Whenever the route of railroad is traversed by public or
246 private routes, commodious passing places shall be kept open for the accommodation of all having occasion to use them, and whenever excavations or embankments may be required in order to establish or maintain such passes or crossing places, the contractor shall prepare such passing places in such manner as the engineer shall direct, and keep them free from obstructions. And when the route of the railroad shall approach so near to any public or private road as to render necessary the discontinuance of the same and the construction of a new road, all excavations or embankments required in the construction of the same shall be done by the contractor, according to the directions of the engineer.

MASONRY.

8. All masonry shall be included under the following heads, viz: Bridge masonry, arch-culvert masonry, box-culvert masonry, pro-
247 tection or slope walls. Bridge masonry shall include all abutments and piers for bridges. Arch-culvert masonry shall in-

clude all abutments & arching for arch culverts. Culvert masonry shall include all box culverts, open culverts, cattle-passes, cattle-guards, walls, paving and coping. Protection or slope walls shall include all walls that may be required for protecting slopes, either in excavations or embankments, and shall be laid in a strong and workmanlike manner, according to the plan and direction of the engineer.

9. The bridge masonry will be cement, rub'le work with rock face, and will consist of good-sized, well-shaped quarried stones, so disposed as to make a fine and compact work, and no stones in the work shall contain less than two cubic feet, except for filling up the interstices between the large blocks in the heart of the walls. At least one-fifth of the face shall be composed of headers, extending full size four feet
248 into the walls, and from the back the same proportions and of the same dimensions, so arranged that a header in the back shall be between the headers in the face. All stones shall be neatly hammer-dressed, so as to have horizontal beds and vertical joints. All bridge masonry, arch-culvert masonry, open culverts, cattle-passes, and cattle-guards to be granted or laid in a full bed of cement mortar, at the option of the engineer, and to be neatly pointed with cement. All cement must be first quality fresh "Rosendale," and mixed when used with such quantity of clean, sharp sand as the engineer shall direct. The stone of which the masonry shall be built must be sound, durable, and well suited to the kind of structure in which it is used.

10. Culvert masonry.—All box-culverts will be built dry; the walls will rest on a pavement of stone set edgewise, of at least ten inches in depth, confined and secured at the ends by deep curbstones, which
249 must be protected from undermining by broken stones placed in such quantity and position as the engineer may *may* direct. The abutments will not *not* be less than two and one-half feet thick, and built of good-sized and well-shaped stone, properly laid and bound together by stone extending entirely through the walls, the upper course to have at least one-third of the stones headers, and the stretchers in no case to be less than twelve inches wide. No stone in this course to be less than six inches thick, the ends to be finished with stone not less than two and one-half feet long, and stepped off to correspond with the slope of the bank. The covering to be of round, strong stone, and to lap its whole width not less than ten inches on each wall. The thickness of the cornering stone to be not less than 10 inches for two feet opening, 12 inches for three feet opening, and 16 inches for four feet opening.

250 11. Protection and slope walls will be good, dry rubble-work, the stone to be of such dimensions and laid with such as the engineer may direct.

12. Foundations of bridges, culverts, &c., to be excavated to such depth as the engineer may direct; foundations for the walls will, if necessary, be made with square hemlock timber, or, if required, by driving piles; in which case the top of the timber or piles must be below water. If timber is used it may be arranged with sticks close together, forming a platform laid upon longitudinal sills or built in the form of crib work of the necessary height, notched at the corners and crossings and well bolted, the cribs to be filled with broken stone well compacted and rammed if necessary, either dry or mixed cement or grounded with cement, as the engineer may direct.

13. Bridges and other wooden structures.—All bridges of 100 feet span and over will be of Houses' patent truss bridge, or any
251 other kind of truss bridge that the R. R. company may adopt.

All bridges of less than 100 feet span, and over 40 feet span, shall be a good and substantial truss, as the engineer shall approve.

Small bridges, open culverts, cattle-passes, &c.—Timber for these will be of good, sound thrifty oak or chestnut, of such sizes as directed by the engineer, to be framed and erected by practical mechanics, and in good and workmanlike manner.

14. Iron rails, chairs, & spikes.—Iron rails will be the T pattern, not less than 50 pounds to the lineal yard; the chairs will be wrought iron, to fit the iron, and not less than 9 pounds each; the spikes to be the common R. R. spikes, 5½ inches long, and not less than 8 ounces each; the track shall be laid with 2,400 cross-ties per mile; the joints of the rail shall be near the centre of the opposite rail, so as to *break* joints. The ends of the ties on one side of the outer line shall
252 be laid even and parallel with the line of the rail; the track shall be laid, ballasted, and surfaced to the grade of the road in a good and workmanlike manner.

15. Cross-ties must be nine feet long, six inches thick, flattened on two sides, with not less than six inches face, sawed or cut square at the ends, and must be of good and sound spring timber, cut between the 1st of November and 1st of April; the ties shall be made of the following timber: white or rock oak, chestnut, or hemlock. Two inches variation in the length of the ties shall be just cause for rejecting the same. Pine ties or ties cut from peeled timber will not be received.

16. The fence shall consist of white oak or chestnut posts and hemlock boards; the posts must be seven feet long and not less than four inches across the small end, flattened on one side, with not less than two inches face; the boards shall be sixteen feet long, eight and ten inches wide, and one and one-eighth inches thick—three-fourths
253 to be eight inches wide and one-fourth to be ten inches wide, the fence to be not less than four and one-half feet high. The posts to be set in the ground not less than two and one-half feet, and to be eight feet apart from centre to centre. On the boundary line and parallel with the line of the railroad the boards shall be so arranged on the fence as to break joints—the lower board to be ten inches wide and the three upper boards to be eight inches wide; the nails used shall be the ten-penny fence nails; the fence to be finished in a good and workmanlike manner, according to the direction of the engineer.

17. No charge shall be made by the contractor for hindrances or delays from any cause in the progress of any portion of the work in this contract, but it may entitle him to an extension of time allowed for completing this work sufficient to compensate for the detention, to be determined by the chief engineer.

18. The work shall executed under the constant supervision
254 of an engineer, to be selected by said company, and who shall have power to reject or condemn all work or material which in his opinion do not fully conform to the spirit of this agreement, and he shall decide every question which can or may arise between the parties relative to the execution thereof, and his decision shall be final and binding upon both parties, excepting as hereinafter mentioned.

19. All engineering, except that required for locating the route of the road, and for determining the character of the work and material as aforesaid, shall be provided by said parties of the first part, at their own cost and expense.

20. The several stipulations of this contract shall be performed in such a manner that the parties of the first part shall not be relieved from the immediate charge and responsibility of the work, whether

the same be done by them directly or by other parties to whom they may transfer or subcontract the same.

21. If any foreman, laborer, or mechanic employed by the con-
255 tractors or any subcontractors shall in the opinion of said engineer execute his work in an unfaithful manner, or in any respect prove remiss or inadequate to the performance of his duty, or disrespectful or riotous in his conduct, he shall forthwith, by direction of said engineer, be discharged; and no person shall be employed on this work in the capacity of foreman, overseer, or mechanic who has been previously discharged for neglect or unfaithfulness from any work within the knowledge of said contractors or contractor or of said engineer.

22. If any damage shall be done by the parties of the first part or by workmen in their employ to the owners or occupants of land or other property adjoining or in the vicinity of the work herein and hereby contracted to be done, the engineer aforesaid shall have the right to estimate the amount of the said damage and to pay the same to such owners or occupants, and the amount of money so paid for such
256 damage shall be deducted from the value of work done under this contract.

23. The road and the work and materials and the whole and every item thereof bestowed and furnished to a due performance of this contract in all its parts and ready for the regular operating thereof and the regular running of trains of cars thereon and thereover shall conform in every respect to the specifications and conditions of this agreement.

24. The party of the second part is to make application to the Erie Railway Company, and to use due and proper influence and exertion with said company to obtain of them the use of locomotive & cars required in doing the work aforesaid, but at the cost and expense of the said parties of the first part.

25. No additional compensation shall be allowed by reason of any change of line unless such change involve an actual additional cost for labor or materials, in which case such actual additional cost only shall be allowed, the same to be ascertained and determined by said
257 engineer of the company, and no abatement of compensation shall be made by reason of shortening the line of said road under any changes which shall be made either at the termini or along the route.

26. The respective parties hereto agree that the sum hereinbefore mentioned to be paid to the said parties of the first part for the work and materials herein stipulated and agreed to be done and finished shall be made as follows: Twenty-five thousand in cash; three hundred and fifty thousand dollars in town bonds of the towns along the line of the road; three hundred and forty-three thousand seven hundred and fifty dollars in first mortgage bonds of the company at their par value, and to make payments on the fifth day of each and every month, commencing with the fifth day of May, 1869, in proportions as above of cash and bonds to the amount of the monthly
258 estimate of work and material done and furnished as estimated and certified by said engineer, retaining until the work is complete twenty-four per cent. from the amount of such estimate. It is mutually agreed that the first-mortgage bonds of said company shall not exceed the sum of three hundred and sixty thousand dollars, and that they shall be payable in twenty years, with interest thereon semi-annually at the rate of seven per cent., and the denomination of such bonds shall be one hundred and five hundred respectively.

It is further agreed that if the parties of the first part refuse or unreasonably neglect to remedy any imperfections which may be pointed out by said engineer, or in any manner violate any of the provisions of this contract, so that in the judgment of said engineer there shall be just grounds of apprehension that the work will not be completed in the manner and within the time hereinbefore specified, then it shall be duty of said engineer to serve written notice upon said
259 parties setting forth the grounds of this apprehension and specifying the manner, together with a reasonable time, in which said parties may cause such grounds to be removed; and if at the expiration of such time said grounds of apprehension be not removed, then full power and authority is hereby mutually vested in said engineer, subject to the qualification hereinafter mentioned, to declare this contract forfeited; and on such declaration being given in writing by the engineer to the parties hereto, this contract shall cease and determine immediately, and the said party of the second part may forever retain the reserved percentage on account of *of* the consideration for damages which they may have sustained by reason of the forfeiture of this contract.

It is hereby further stipulated and agreed that wherein in any particular the said party of the first part shall be dissatisfied with any determination made by said engineer, as hereinbefore provided, the
260 question of difference shall be referred to a disinterested, experienced civil engineer upon whom the parties may agree, and his decision shall be final and conclusive upon both parties, anything hereinbefore contained to the contrary notwithstanding, and the expense of such reference shall be shared equally by the respective parties hereto.

It is hereby further stipulated and agreed that the work on the said road shall be distributed on the line thereof in such places or sections as the chief engineer may direct, provided the same shall not prejudice the facilitating of the whole work.

In witness whereof the parties to these presents have hereunto set their hands and seals in duplicate the day & year first hereinbefore written.

WM. D. COLT. [L. S.]
F. C. CROWLEY. [L. S.]
CHAS. L. COLT. [L. S.]
O. B. WHEELER, [L. S.]
President.

Sealed & delivered in presence of—
F. C. CUNNINGHAM.
S. O. DIMMICK.
C. F. R. LUDINGTON.

261 Plaintiff offered in evidence the coupons identified by the witness Cady, to which the defendant objected on the following grounds:

That it is not shown the bonds were legally issued, or issued by authority in behalf of the town. Also upon the ground that the coupons themselves purport to be signed by only one commissioner and there is no authority to be found in the statute whereby one commissioner may bind the town by an obligation of this kind. And also on the ground that the bonds were not sealed. The court overruled the objection and received the coupons in evidence, to which ruling the def't's counsel excepted.

WILLIAM H. SEYMOUR, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Examined by Mr. HILL:

262 Q. You are connected with the Hanover Bank of this city?

A. Yes, sir.

Q. And have been for what length of time?

A. Considerably over 20 years.

Q. These coupons which have been referred to here were made payable at that bank?

A. Yes, sir.

BENJAMIN CALAHAN was sworn as a witness for the pl'ff, and testified as follows:

I am a member of the firm of Vermilyea & Co., of New York City; their business is banking; they have been engaged in that business for for thirty-six years, dealing in bonds. Seventy-six thousand dol-lars of these Town of Thompson bonds came into their possession in November & Dec., 1869; they were for sale sold; they were numbered as follows: 138 to 148, 102 to 130, 5 to 13, 40, 95 to 99, 52, 44, 131 to 137, 13, 14, 15, 39, 43, 42, 49, 45, 47, 46, 38; these were all sold.

263 ERASTUS T. MEAD, sworn for plaintiff, testified as follows:

I was connected with the Atlantic Savings Bank of New York City as trustee. In 1874 or 1875 the name was changed to the Bond Street Savings Bank.

The bank purchased as an investment about $50,000 of these Thompson bonds in 1870.

Q. Nov., 1869, is the exact date?

A. I should say about that time. I could not swear to the exact date. The bank disposed of $2,000 of them to Sinclair Tousey, and afterwards the bank sold to Messrs. Gulick and Van Cleck eighteen or twenty *twenty* thousand dollars of them; the rest of them were retained by the bank.

WILLIAM H. VAN CLECK was sworn as a witness for the plaintiff, and testified as follows:

I reside in the city of New York and have so resided for a long time.

I am a member of the firm of Gulick & Van Cleck. We first
264 bought some of these Thompson bonds from a bank at Port Jervis in September, 1869, numbered as follows; 28, 29, 35, 72 to 76, both inclusive. We next purchased in February, 1875, $18,000 of the Bonds Street Savings Bank, numbered 122 to 130 inclusive, 138 to 146 inclusive. I gave them to Mr. Muller to sell at auction in this city; both lots. Also No. 20, 29, and 30, making 21 bonds in all. I understood that Mr. Perrine bought them.

Cross-examined:

Mr. Muller was a prominent auctioneer in New York City. He sold the bonds at the Exchange salesrooms, No. 111 Broadway. I think he sold them all at one time. I was present at the sale. I don't think I had been there but once before in five years.

ORLANDO PERRINE was sworn as a witness in his own behalf, and testified as follows:

265 I reside at South Amboy, in the State of New Jersey; have resided

there seven or eight years. I bought some of the Thompson bonds in 1875; bought 21 of them July 21st, 1875; the coupons from 1872 were attached, the previous ones were off.

I brought an action on some of the coupons—on the coupons of the bonds I bought; and since the trial of that action, I bought the rest of the coupons set forth in the complaint in actions Nos. 2 & 3; paid for them. I bought them the latter part of May, 1878.

Cross-examined:

I have resided at South Amboy since 1871. Previous to that I resided at Spotswood, about 10 miles from South Amboy. I am in the mercantile business, as a general business. I have some money invested in a cranberry lot. I have some town lots at South Amboy. I
266 have about 75 acres in the cranberry lot, and I have invested some money in some other lots. I own a store property at Spotswood, I do not own a store property at South Amboy.

Q. Is that property at Spotswood encumbered?

(Counsel for the plaintiff objected, and the court excluded the evidence.)

Q. What is the value of your real estate at Spotswood?

(Counsel for plaintiff objected; the court excluded the evidence; to which ruling def't excepted.)

Counsel for the defendant here stated to the court that he offered this evidence to show that the plaintiff was an irresponsible man, that his property at Spotswood is encumbered for all it is worth, and that the plaintiff had no means with which to purchase these bonds.

267 (The court ruled to exclude the evidence, to which ruling def'ts, counsel excepted.)

Witness continued: I was the plaintiff in the action tried in this court in May, 1878. At the time of that trial I claimed to own twenty-one of the bonds. I purchased them at the Exchange, Trinity building, Broadway, in this city. I was not in the habit of attending sales at that place. I had been there a number of times before. I never made any purchase of stocks prior to that time. I was acquainted with Gulick & Van Cleck. I purchased these bonds at forty-three per cent. I paid for them afterwards at the office of the auctioneers in Pine street, New York.

Q. Did you pay for them in cash?

A. I rather think it was a check.

Q. Whose check?

A. I think it was of Russell & Co. I received the check from
268 that firm. I did not receive the means with which I purchased the bonds from Messrs. Gulick & Van Cleck, nor any portion of it, directly or indirectly. It was money that I had borrowed on my own credit and responsibility. I had never made any purchase at that place before, I think. After the trial of the action, in May, 1878, I purchased the balance of the bonds in these two actions, and five bonds besides. At the time of the trial, in May, 1878, all the interest I had in these bonds was the 21 bonds that I had previously purchased. Since then I bought the five bonds of Mr. Van Cleck, by a private purchase, the latter part of May, 1878. I made that purchase from him at 188 Chambers st., New York. Mr. Van Cleck was a resident of New York, and is yet so far as I know. I bought the five bonds at $500 each, and the coupons at 30 per cent.

269 Q. What agreement was made between you and Mr. Van Cleck in reference to your paying him?

A. No particular agreement was made. I paid for them shortly afterwards. I brought a draft from the bank where I do my business.

Q. Did you give him any writing, or was there any writing made between you?

A. I received a bill from him at the time I paid him. I did not receive the bonds until I paid for them. I was aware that he could not maintain an action in this court upon these bonds and coupons. There was no agreement of any kind that Van Cleck should retain any interest in the property. I first bought from Van Cleck the five bonds and the coupons in action No. 2, and I subsequently bought from him the coupons in action No. 3. I made the last purchase the latter part of July, 1878. I gave him my note payable at the bank where I do business. I paid the note August 1st. I carried on the mercantile
270 business at South Amboy in my own name, and have been engaged in it for several years. I am carrying about $6,000 to $8,000 worth of stock, and have about $8,000 to $10,000 worth of accounts on my books. I have a bill of sale of some of these coupons, and a memorandum in regard to the others. I am not carrying that business with borrowed capital. I buy on 30 days. I sometimes borrow money at the bank, but not lately. I don't think I have had to get my notes discounted at my bank in the last eight years over once or twice.

Q. You say you borrowed the money *the money* that you purchased these bonds with in 1875?

A. Yes. It is three years since, now, and I cannot be positive about the firm. I think I borrowed it of Russell & Co.

COURT. Q. Do you know who left the money there which was loaned to you?

271 A. No, sir; I am not aware that anybody left it.

Q. Did you give your note for it?

A. I forget the exact shape of that transaction. I forget how I did it; it was three years ago.

Q. Were you accustomed to borrow money in that amount while you were living at South Amboy?

A. No, sir; I was not.

Q. Were you accustomed to borrow money in amounts of one-quarter of that in South Amboy?

A. Well, I don't know as I was.

Q. When did you pay that $9,000?

A. I say that transaction is rather indistinct.

COURT. Q. Did you ever borrow so large a sum before or since?

A. No, sir; I don't think I did.

COURT. Q. Do you remember whether you have ever paid it or not?

A. My impression is that it has been paid.

COURT. Q. Do you remember whether they have ever asked you for it or not?

A. I remember that I have not heard from them in a long time.

272 COURT. Q. What do you mean by that, that you borrowed the money and paid it the same day?

A. No; I don't mean that. I can't remember the precise circumstances.

Q. Have you any property outside of what is employed in your trade except what you speak of?

A. Well, I have about 75 or 80 acres of land situated about four

miles from village. I also own some town lots worth four or five hundred dollars. My property at Spotswood is worth $1,500.

COURT. Q. How much was your responsibility at the time you borrowed this $9,000 over and above what you owed?

A. I don't know how I could get at that.

Q. Was it over $3,000?

A. Oh, yes.

Q. Did it exceed $5,000?

A. Yes, sir; I think it did.

COURT. Q. Don't you think it was a little singular that you
273 could go and borrow $9,000 in the way you say you did?

A. No; they were willing to lend it, and I got it. I never dealt in municipal bonds nor railroad bonds except on the two occasions I speak of.

The coupons are all for the same amount and in the same form, and the following is a copy of one of them:

"$35.] [$35.

"The Town of Thompson, County of Sullivan, will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due on that day on bond No. 99.

(Signed) "W. H. CADY,
"*Commissioner.*"

Pl'ff rests.

274 GULIEN PENDELL was sworn as a witness for the defendant and testified as follows:

I am deputy clerk of the county of Sullivan.

The witness here produced the consents of the tax-payers of the town of Thompson, filed in the Sullivan County clerk's office.

Defendants' counsel offered the same in evidence, of which the following is a copy:

STATE OF NEW YORK,
County of Sullivan:

James Brown, of the town of Thompson, in the said county, being duly sworn, deposes and says that he is an assessor of the town of Thompson, Sullivan Co., N. Y., duly elected and sworn as such; that the written and printed instrument to which this affidavit is annexed exhibits the consent of the tax-payers of said town of Thompson
275 to the borrowing, on the faith and credit of said town, and to the issuing of bonds therefor, pursuant to an act of the legislature of the State of New York, entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4th, 1868. That the whole number of tax-payers of said town of Thompson assessed and appearing upon the assessment-roll of said town of and for the year 1867, that being the last assessment-roll of said town, is seven hundred and twenty-three; that the whole

amount of taxable property of said town appearing upon the last assessment-roll (the roll of 1867), not including lands owned by non-residents, is $420,648; that the whole number of tax-payers, whose names appear upon the said assessment-roll, who have signed the annexed consent, and whose names are appended thereto, is four hundred and twenty-four; that said number constitutes more than a majority of the tax-payers of said town, or their legal representatives, appearing upon the said roll, and that the whole amount of taxable property which the tax-payers or their legal representatives appearing on the said last assessment-roll represent, who have signed the said consent, is $224,138, and that such amount is more than one-half, or a majority of the taxable property of said town (not including lands owned by non-residents), appearing on the said last assessment-roll, and that the consent of the tax-payers of said town, both as respects their number and the amount of taxable property which they represent, as shown and appearing by the last assessment-roll of said town, has been obtained for the purpose aforesaid, pursuant to the provisions of the act aforesaid.

JAMES BROWN.

Sworn before me this 9th day of December, 1868.

D. G. STARR,
Justice of the Peace.

Consent.

We, the undersigned, tax-payers of the Town of Thompson, county of Sullivan, and State of New York, in accordance with the provisions of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years from the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4th, 1868, do hereby consent that the commissioners appointed for the said Town of Thompson, under and by virtue of the provisions of said act, may borrow upon the faith and credit of the said Town of Thompson, the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment-roll of said town for the year 1867, at a rate of interest not exceeding 7 per cent. for a period not exceeding 30 years, and to execute therefor, under their hands and seals, the bonds of the said Town of Thompson, and to do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid."

Dated May 16th, 1868.

Signed by four hundred and twenty-four tax-payers.

Witness also produced a judgment-roll from the said clerk's office in an action between the people of the State of New York ex rel. Kilbourne et al., ag'st Giles M. Benedict et al., defendants.

Counsel offered the said judgment-roll in evidence.

Plaintiff's counsel objected to the judgment-roll. Objection overruled, and the judgment-roll was received in evidence, of which the following is a copy:

280 *Summons.*

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, the Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

To the above-named defendants:

You are hereby summoned and required to answer the complaint of the plaintiffs in this action, which is herewith served upon you, and to serve a copy of your answer on me, at the law office of Albert J. Bush, in the village of Monticello, Sullivan County, New York, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer said complaint as hereby required, the plaintiffs will apply to the court for the relief demanded in the complaint.

M. B. CHAMPLAIN,
Attorney-General, for Plaintiffs.

Complaint.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, the Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

The People of the State of New York, upon the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, and by their attorney-general, Marshall B. Champlain, complain of the defendants in this action, and allege that the defendants, Giles M. Benedict, William H. Cady, and Nathan S. Hamilton are public officers and commissioners exercising corporate powers, and that they were duly appointed such officers and commissioners for the Town of Thompson, in the county of Sullivan, and State of New York, by the county judge of said county, under and in pursuance of the provisions of an act of the legislature of the State of New York, passed the 4th day of May, 1868, and which act was afterwards approved by the governor of said State, and is entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may be hereafter organ-
281 ized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," and that said defendants last-named have entered upon the discharge of their duties under said act, and another act amending the same, passed April 21, 1869, being chapter 96 of laws of 1869.

That in and by said acts it is made lawful for said commissioners to borrow, on the faith and credit of said Town of Thompson, such sum of money as the tax-paying inhabitants of said town shall designate, not exceeding thirty-three per cent. of the valuation of said town, to be

ascertained by the assessment-rolls of said town for the year 1867, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor, under their hands and seals; that said commissioners are expressly prohibited by said acts from contracting any such debt, and from issuing any of said bonds of or for said town until the written consent shall first have been obtained of a majority of the tax-payers of said town; or of their legal representatives appearing upon the last assessment-roll, as shall represent a majority of the taxable property of said town (not including lands owned by non-residents) appearing upon the last assessment-roll of said town; which consents are required to be proved or acknowledged in the same manner as conveyances of real estate are proved or acknowledged. And said commissioners are also in and by said acts prohibited from borrowing any such money or contracting any such debt, and from issuing any of said bonds until such consent shall be executed as aforesaid, and in which consents shall be expressed and stated the amount of money authorized to be raised in said town, and also the railroad company in the stock of which said money shall be invested.

That the fact that a majority of said tax-payers representing a majority of the taxable property of said town, as required by said act, has been obtained, is required to be proved by the affidavit of one of the assessors, or the town clerk of said town, endorsed upon or annexed to such written consents, and such consents and affidavit are required to be filed in the office of the clerk of Sullivan County, and a certified copy thereof in the town clerk's office of said town; and the same or a certified copy thereof by the county clerk, are made evidence of the facts therein contained, and certified in any court of this State, and before any judge or justice thereof.

The plaintiffs further allege that after the said consents have been obtained and filed as required by said acts, and after an amount of capital stock of said road shall have been subscribed for in good faith by individuals or corporations equal to fifteen per cent. of all amounts of town bonds issued in aid of said railroad company, and ten per cent. thereof paid, the said commissioners are by said acts authorized in their discretion to dispose of such bonds, or any part thereof authorized by said acts to be issued by them, to such persons or corporations, and upon such terms as they shall deem most advantageous for their said town, but not for less than par; and the money thus raised is directed by said acts to be invested in the stock of such company as the said tax-payers have in their said consents named and stated, organized at the time of the passage of the first-named act, or such company so named by said tax-payers in their consents that may be thereafter and within two years organized, for the purpose of building or aiding in building, a railroad from said village of Monticello to Port Jervis through the towns hereinbefore stated. And said commissioners are by said acts authorized to subscribe for and purchase stock of such company to the amount of the money so loaned and borrowed by them; and upon receiving certificates therefor the said Town of Thompson acquires all the rights and privileges, and becomes liable to the same responsibilities as other stockholders of such company; and it is made lawful for said commissioners, or either of them with the consent of the others, to participate in the meetings of the stockholders, and to act as directors if elected as such.

The commissioners are by said acts required to report to the board of supervisors of said county of Sullivan within three days after the

commencement of their regular annual meeting in each year, the amount required to pay the principal or interest, if any, on the said bonds authorized to be issued under and by virtue of said acts due, or to become due and payable during the next succeeding year. The dividends arising from the stock so subscribed for and purchased by said town, or so much thereof as may be necessary, is to be received by said commissioners and applied by them to the payment of the interest which shall from time to time accrue upon such bonds; and if such dividends prove insufficient in any one or more years to pay the principal or interest accruing on said bonds due or to become due, it is made the duty of the said board of supervisors to cause to be assessed, levied, and collected on the real and personal property of said Town of Thompson, at the same time and in the same manner as other taxes are assessed, levied, and collected, such sum or sums as shall have been reported to the said board of supervisors by the said commissioners to be necessary to make good such deficiency; and when collected it shall be paid to the said commissioners, and be by them applied to the payment of the principal and interest on said bonds, or so much thereof as shall remain unpaid after the application of said dividends to that purpose.

And it is made lawful for such railroad company to agree with the said commissioners in behalf of said town to pay the annual interest accruing on such bonds for the term of three years, or until such road shall be completed and in operation, and the amount of such interest is to be repaid by the said commissioners to such company within three years after said road shall be opened and put in operation, in equal annual installments, to be levied and raised in the same manner as provided by said act for paying the annual interest on said bonds, or by the sale of the stock as in said act provided, in case the dividends or income from the stock held by said town shall be insufficient for that purpose. And it is further provided by said acts that after thirty years from the passage thereof it shall be the duty of the board of supervisors of Sullivan County, unless the payment of said bonds is otherwise provided for, to cause to be assessed, levied, and collected on the real and personal property of said Town of Thompson, at the time and in the manner as other taxes are assessed, levied, and collected, the sum due on the said bonds so issued in pursuance of said acts, together with the interest on said principal sum, or so much thereof as may remain unpaid by reason of the deficiency of the dividends and moneys arising from the sale of said stocks. The amount so to be raised by said board of supervisors for the payment of said principal sum, or the interest, is to be determined by the said commissioners as hereinbefore stated.

The plaintiffs allege that in or about the month of December, of the year 1868, the defendants, or some one or more of them, filed, or caused to be filed, in the county clerk's office of Sullivan County, a roll, bundle, or package of papers, which they allege and claim contains the
282 written consents of a majority of the tax-payers of the said Town of Thompson, owning or legally representing more than a majority of the taxable property of said town (excluding that of non-residents of said town) for the year 1867, to the borrowing on the faith and credit of the said town, and the issuing of bonds therefor to the amount of one hundred and forty-eight thousand dollars, in accordance with the provisions of the said acts as hereinbefore stated; that the said written and printed consents contained in said papers so filed bear date May 16, 1868, and were in fact made and signed by said tax-payers, and acknowledged by them during the said month of May, and immediately thereafter, and before the month of September, 1868, and

the names of the tax-payers and subscribers thereto are written under the written and printed consents, which said written and printed consents are in the following words and figures, to wit:

"We, the undersigned, tax-payers of the town of Thompson, county of Sullivan, and State of New York, in accordance with the provisions of an act entitled 'An act to authorize certain towns in the counties of Sullivan & Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years from the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County,' passed May 4, 1868, do hereby consent that the commissioners appointed for the said Town of Thompson, under and by virtue of the provisions of said act, may borrow upon the faith and credit of the said Town of Thompson the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment-roll of said town for the year 1867, at a rate of interest not exceeding 7 per cent., for a period not exceeding thirty years, and to execute therefor, under their hands and seals, the bonds of the said Town of Thompson, and to do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid. Dated May 16, 1868."

To the said consents in the above form is written the names of four hundred and twenty-four persons and firms. The whole number of tax payers appearing on the assessment-roll of said town for the year 1867 is 723. The whole amount of taxable property represented by said names and firms who signed said consents is $224,138, and the whole amount of property appearing on the said assessment-roll for 1867, excluding that of non-residents, is $420,648. That no other form of consent is filed in the said county clerk's office than the one above set forth, and it is upon the said-described consents, and those only, that the said commissioners, defendants herein, claim to have executed and disposed of the bonds of said Town of Thompson, as hereinbefore alleged.

And the plaintiffs further show and allege that the said consents of the said tax-payers do not state nor name, nor in any way designate or indicate the railroad company in the stock of which said money shall be invested, nor do they in any manner name or allude to the said Monticello and Port Jervis Railway Company. That at the time of signing said consents by said tax-payers the said Monticello and Port Jervis Railway Company was not organized, nor was any other railway or railroad company organized for the purpose or with the intention of building a road or railway from Monticello to Port Jervis, through the towns specified in said acts, or through any other towns or on any other route or way. That the said defendant, The Monticello and Port Jervis Railway Company, was organized and became a corporation by filing their articles of association in the office of the secretary of state of the State of New York on the 2nd day of September of the year 1868, and after the organization of said company no considerable numbers of said tax-payers, if any, signed said consents, nor did those, if any signed the same after that date, represent or own a quarter part of the taxable property of said Town of Thompson (excluding that of non-residents), appearing on the said assessment rolls of 1867.

And the plaintiffs further allege that the said defendants the commissioners, have subscribed, or pretended to subscribe, in the corporate name of the said Town of Thompson, for the stock of said railway com-

pany to the sum of one hundred and forty-eight thousand dollars absolutely, and have executed and delivered to the defendants, the said Monticello & Port Jervis Railway Company, the bonds of the said Town of Thompson, to the amount of $148,000, in payment for said stock, which said bonds are all issued in denominations of $1,000 each, and number 148, and are signed by all said commissioners and registered by the clerk of Sullivan County in his office, and attested by his signature thereon, and are numbered from one to one hundred and forty-eight, inclusive. Said bonds respectively bear date May 1, 1869, and the principal sum is made due and payable at the expiration of thirty years from said date, at the office of the said commissioners in Monticello, and to each of which said bonds is attached coupons pledging the payment of interest, at the rate of seven per cent. per annum, semi-annually, on the first days of September and March of each year thereafter, at the National Hanover Bank of the city of New York, and each of which said coupons bear, in accordance with a resolution of the said board of commissioners, the name of William H. Cady, commissioner, as the signature thereto. That said bonds and coupons are engraved and executed in a form pledging the faith and credit of the said Town of Thompson to the payment of the same as they mature and become payable as above stated.

And the plaintiffs further allege that after the appointment of said commissioners by the county judge of Sullivan County, and after obtaining the written consents above specified, or a majority of said signatures thereto, the said commissioners, with others, got up and organized the said Monticello and Port Jervis Railway Company, to the stock of which each of said commissioners is an individual subscriber to the amount of $1,000, and is also a director of said company, and was made such director and is so named in the organization of said company.

And the plaintiffs further say that the said defendants, The Monticello and Port Jervis Railway Company, is an association and corporation formed under the laws of this State, and were organized by filing their articles of association in the office of the secretary of state of the State of New York on the 2nd day of September in the year 1868, for the purpose of constructing, maintaining, and operating a railway for public use in the conveyance of persons and property from the village of Monticello, in the said county of Sullivan, to the said village of Port Jervis, in the county of Orange, through the towns of Thompson, Forestburgh, and Deerpark, aforesaid, which road is to be maintained and operated for ninety-nine years. That the capital stock named in the said articles of association is $500,000; that of said capital stock the commissioners of the town of Deerpark have taken, or propose to take, $200,000; the commissioners of the said town of Forestburgh $23,000,
and the said commissioners of the town of Thompson $148,000,
283 in behalf of their respective towns, and that individual and other corporations and firms have taken, or propose to take, about fifty-five thousand dollars, making a sort of actual capital stock made up of town bonds and other property, to the nominal amount of $426,000.

And the plaintiffs further allege that the defendants, the said railway company, have gone on and surveyed, and have partly located their line of road through the said towns, from the village of Monticello to Port Jervis, and have negotiated and contracted with the defendants, F. C. Crowley, C. L. Colt, and William D. Colt, three gentlemen composing the firm of W. D. Colt & Co., by the terms of which contract the said defendants, W. D. Colt & Co., undertake and promise

to furnish the material and build and complete, by the 1st day of June, 1870, said road from the said village of Monticello to the said village of Port Jervis, and to make and construct all necessary turn-outs, switches, depot buildings, turn-tables, and other appurtenances thereto, for the sum of six hundred and fifty thousand dollars, and to take and receive in payment therefor $25,000 in cash, $350,000 in said town bonds of the three towns herein named, and first-mortgage bonds upon the said road for the residue of the $650,000, to be executed upon said road so soon as the same is located and advanced to a point where it is possible to mortgage the same. That the said defendants, W. D. Colt & Co., have gone on under said contract with the said railway company and are now building said road, and the said railway company have already delivered to them, the said W. D. Colt & Co., large sums of the said bonds of the said Town of Thompson, and threaten to deliver and intend to deliver the residue of said bonds on said contract.

And the plaintiffs further say that the said defendants, Wm. D. Colt & Co., have offered for sale and are now offering and advertising for sale through their broker, Wm. A. Guest, at 25 Wall st., New York City, the whole of the $148,000 of bonds so issued by the defendants, the commissioners, as aforesaid. That there is great danger that said bonds of the Town of Thompson will be sold for value to bona fide purchasers in good faith, and so become in the hands of such purchasers good and valid claims and obligations against the said Town of Thompson, and as such collectable against said town, and the town liable to pay the same unless the defendants are restrained and enjoined from using and selling the same by order and judgment of this court, and are also restrained and enjoined from using and selling the same, and from borrowing or obtaining money thereon; and that the Town of Thompson will, if said bonds are so sold or money borrowed thereon, be liable to many lawsuits arising upon said bonds by the holders and owners thereof, and put to great trouble, expense, and litigation. That all the defendants, except the defendant, the Town of Thompson, claim that said bonds are now good and valid obligations against said town, and that they have rightfully and lawfully disposed of and are lawfully and rightfully disposing of the same, and unless the same are adjudged void by the judgment of this court many lawsuits and much litigation will result from the attempt of said pretended holders and claimants to enforce the payment of said bonds and coupons against said town.

And the plaintiffs further say that none of said bonds have been sold by the defendants, the said commissioners, for cash, and no money has been borrowed thereon, but were unlawfully and fraudulently to said town exchanged for the stock of said railway company as aforesaid, and that none of the said defendants have purchased said bonds for cash at par, or for any other amount in money, or loaned any money thereon, and the plaintiffs allege and insist that said defendants, nor none of them are bona fide owners or holders of said bonds, and that the same were, and to the knowledge of all the defendants, executed without any authority of law, upon insufficient and void consents of said tax-payers, and were unlawfully and fraudulently negotiated, as hereinbefore stated, and that all and every and each said bonds in the hands of the defendants, or either or any of such defendants, is and are absolutely void and worthless. That each and every of said defendants well knew when said bonds were executed and delivered by the said commissioners as aforesaid that the said consents on which they were pretended to be issued were signed by nearly all said tax-payers

before said railway company was organized, and that said consents did not contain nor state, or in any way designate the Monticello and Port Jervis Railway Company, nor any other railway or railroad company, in the stock of which the moneys in any way loaned on said bonds should be invested; and each and every of said defendants well knew at the time said bonds were executed that said acts of the legislature prohibited the execution and issuance thereof on consents which did not contain such statements, and that it was also unlawful for said commissioners to dispose of or sell said bonds except for cash, and at least at a hundred cents on the dollar of their nominal value. And the plaintiffs allege that there is no authority given by said acts to said commissioners to sell, transfer, or dispose of said bonds or any of them for stocks in the said railway company, nor for any other property than money, or for a less sum than par.

The plaintiffs further allege that the said Monticello and Port Jervis Railway Company is irresponsible, and has but a small fraction of the money or property required to construct said road independent from the bonds of the said three towns herein named. That the building of said road is projected upon the basis of such bonds, and contracted to be built on that basis, and the project of mortgaging the bed of the road, and the few thousand dollars other subscriptions before stated. That there is no part of said road completed, and but a fractional part of the personal subscription to said stock is paid in to said company.

The plaintiffs further allege that the relators, Charles Kilbourne and Samuel Thompson, are tax-payers of said Town of Thompson, as well as the other tax-payers on whose behalf the matters herein are related and set forth.

And the plaintiffs further allege that whether the defendants, commissioners, and public officers aforesaid, and the other defendants, the said railway company and the defendants, Wm. D. Colt & Co., shall go on and use and dispose of said bonds under the circumstances herein set forth is a question in which every tax-payer in said Town of Thompson at the present time, and every one who shall be a tax-payer of said town during any time said bonds shall be in existence and unpaid, is commonly interested, and the questions sought to be litigated in this action are common to all and every of said tax-payers, and the matters complained of, if suffered to be done, would work or cause no peculiar damage to the individual interests of the relators, Samuel Thompson and Charles Kilbourne, in which kind of damage the owners of real estate and the tax-payers in the said town would not also share. That the taxes levied for the payment of said bonds and coupons would be a public tax in which all the tax-payers of said town would be included,
and it is for the interest of the public generally and of the whole
284 people of the State of New York, that taxes should everywhere
throughout said State be as light as possible, and that no part of the public nor any town or district of the State should be taxed, except when all the conditions upon which the right to tax depends have been complied with, and that no town or municipal organization or corporation should be involved in a multiplicity of lawsuits and litigations growing out of the illegal and unauthorized action of public officers, exercising as such officers and boards of officers corporate powers and functions not authorized by law, or in a manner not so authorized by the statutes and laws of this State; that the defendants, the commissioners, are exercising professedly on behalf of the defendant, The Town of Thompson, corporate rights, privileges, and franchises not granted to them or the

said town by any law of the State, and the defendants, the said railway company, in the acts herein alleged against them, in bartering stock for said bonds and transferring the same, are acting outside of their corporate powers, and assuming rights and privileges as a corporation in conflict with the laws of this State.

And the plaintiffs further say that it is claimed by some of the defendants, and particularly by the said commissioners, that the defendant, The Town of Thompson, has acquired a vested right to the stock subscribed for by the said commissioners, and a corresponding liability to pay said bonds.

The plaintiffs pray the aid and judgment of this court that the said bonds executed by said commissioners, as herein stated, and each and every of said bonds be declared void and of no effect or obligation against said Town of Thompson, and that the same be by the defendants delivered up to the defendants, the commissioners, and that said commissioners deliver up to said railway company any and all certificates of stocks or other considerations received by them in consideration of said bonds, and that the court adjudge and determine that the defendant, The Town of Thompson, has no interest in or title to any of said stock so subscribed for by the said commissioners as aforesaid; and that each, every, and all of the defendants, their agents and officers, and all the agents and officers of either or any of them, and all persons acting under or for the defendants, or either or any of them, be forbidden and perpetually restrained and enjoined by the order and judgment of this court from using, loaning, or selling said bonds, or any of them, and that the defendants, the commissioners, be enjoined and restrained from executing any other bonds on behalf of their town upon the strength of the consents aforesaid, and until the necessary consents, as provided by said acts of the legislature, are obtained and filed in due form of law.

M. B. CHAMPLAIN,
Attorney-General, for Plaintiffs.

SULLIVAN COUNTY, *ss:*

Charles Kilbourne and Samuel Thompson, of the town of Thompson, in said county, being severally sworn, each for himself, deposes and says that he has heard read the foregoing complaint, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief; and as to those matters he believes it to be true.

SAMUEL G. THOMPSON.
CHARLES KILBOURNE.

Sworn and subscribed before me June 14th, 1869.

SETH H. ROYCE,
Justice of the Peace.

Injunction order.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, The Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

It appearing to me by the sworn complaint in this action that sufficient grounds exist for granting an injunction-order in this action, upon motion of Marshall B. Champlain, attorney-general and attorney for the plaintiffs in this action, I do hereby order that the above-named defendants, the Commissioners of the town of Thompson aforesaid, and the Monticello and Port Jervis Railway Company, F. C. Crowley, C. L. Colt, and William D. Colt, and each and every of them, their agents, attorneys, and officers, and the agents, attorneys, and officers of either or any of them, and all persons acting under or in behalf of said defendants, or either or any of them, be and they are restrained and enjoined from using, loaning, or selling the bonds, or any part of them, mentioned and described in the complaint in this action, and which purport to have been issued by the defendants, the said commissioners, under the act described in the title of this action. And the said commissioners, defendants herein, are further restrained and enjoined from executing any other bonds on behalf of their said town upon the strength of the consents described in the complaint in this action, and each and every of said defendants, their agents, officers, and attorneys, and all other persons acting under them, or any or either of them, are hereby restrained and enjoined, as hereinbefore set forth, until the further order of this court.

Granted upon the complainants executing a bond in the sum of $2,000, with sureties to be approved by a justice of this court.

R. W. PECKHAM,
Justice of the Supreme Court.

Dated Albany, June 24th, 1869.

285 *Bond.*

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, The Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

Whereas the above-named plaintiffs having applied to Rufus W. Peckham, a justice of this court, for an injunction restraining the above-named defendants, and all and every of them (except the defendant, the Town of Thompson), and all other persons acting on their behalf or on behalf of either or any of them, from using, loaning, or selling the bonds, or any part of them mentioned and described in the complaint in this action, and from executing any other bonds on behalf of their said town; and whereas on the 24th day of June, 1869, the said justice of this court did grant said injunction, upon condition that the complainants in this action execute a bond in the sum of $2,000, with sureties to be approved by a justice of this court, we, the undersigned, Charles Kilbourne, Samuel Thompson, Henry L. Benedict, and Matthew P. Lindsley, all residents of said county of Sullivan and town of Thompson, do undertake, on the part of the said plaintiffs, that the said plaintiffs will pay to said defendants such damages not exceeding two thousand dollars as they may sustain by reason of the injunction, if the court shall finally decide that the plaintiffs were not entitled thereto.

Dated at Monticello, June 25th, 1869.

The words "will pay" interlined before signing.

SAMUEL G. THOMPSON. [L. S.]
CHARLES KILBOURNE. [L. S.]
HENRY L. BENEDICT. [L. S.]
M. P. LINDSLEY. [L. S.]

Witness, A. J. BUSH.

STATE OF NEW YORK,
Sullivan County, ss:

On this the 25th day of June, A. D. 1869, personally came before me, Samuel Thompson, Charles Kilbourne, Henry L. Benedict, and Matthew P. Lindsley, to me personally known to be the same persons described in and who executed the foregoing bond, and severally acknowledged that they executed the same.

A. J. BUSH,
County Judge of Sullivan County.

SULLIVAN COUNTY, *ss:*

Henry L. Benedict and Matthew P. Lindsley being each duly sworn, doth each for himself severally say that he is a householder and freeholder in this State, and that he is worth two thousand dollars over and above all debts and liabilities he owes or has incurred, and besides his property exempt from levy and sale on execution.

HENRY L. BENEDICT.
M. P. LINSLEY.

Sworn severally before me June 25th, 1869.

A. J. BUSH, *County Judge.*

I hereby approve of the foregoing bond and of the sureties therein named.

A. B. TAPPEN,
Justice of the Supreme Court.

JUNE, 1869.

SULLIVAN COUNTY, CLERK'S OFFICE, *ss:*

The foregoing bond was filed in this office the 2d day of July, 1869.

C. L. MORRIS, *Clerk.*

SULLIVAN COUNTY, SHERIFF'S OFFICE, *ss:*

I hereby certify that I served the within summons, complaint, order, and undertaking on Solomon W. Royce, supervisor of the town of Thompson, and on Giles M. Benedict, William H. Cady, and Nathan S. Hamilton, the commissioners within named and directors of the within railroad compa'y, on the 2d day of July, 1869, in the village of Monticello, in said county, by delivering to each of them a copy thereof and leaving the same with them, respectively, and at the same time I showed to each of said defendants a copy of the original order of injunction and the signature of Justice Peckham thereto; and he further says, and on oath, being duly sworn, that he served in the same manner said complaint, summons, order, and undertaking on Samuel O. Dimmick, the secretary of said railway company, at the town of Chester, Orange County, N. Y., on the 6th day of July, 1869, all of whom, the persons served as aforesaid, he knew to be the same individuals named as defendants herein, and he served in like manner all the said papers on the defendant, F. C. Crowley, at Monticello aforesaid, on the 10th day of July, 1869, known to him also to be one of the defendants.

B. W. WINNER, *Sheriff.*

Sworn before me July 19, 1869.

A. J. BUSH, *County Judge.*

(Endorsed as follows:) Supreme court. The People, on the relation of Charles Kilbourne and others, against Giles M. Benedict and others,

commissioners, &c., and others. Summons, complaint, injunction, order, and bond. M. B. Champlain, attorney-general, for plaintiffs. Monticello, N. Y. Filed July 3, 1869.

Supreme court, county of Sullivan.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne and others, plaintiffs,
against
GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, &c., and others, defendants.

The defendants, Giles M. Benedict, William H. Cady, and Nathan S. Hamilton, commissioners of the town of Thompson, in the
286 county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, answering the complaint in the above-mentioned action, allege that under and by virtue of the above-mentioned act, the consents mentioned and stated in said complaint, and the other acts and things *pre*emptorily required by said act to be done and performed, having been done, and the requisitions thereof having been complied with as stated and set forth in said complaint, they, the said commissioners of said town of Thompson, had full power and lawful authority to do and perform each and every of the acts alleged in said complaint to have been done and performed by them as such commissioners, and the said defendants deny that the bonds of the Town of Thompson aforesaid, to the amount of $148,000, have been fraudulently and unlawfully issued by them to "The Monticello and Port Jervis Railway Company," and that the said bonds have been fraudulently disposed of by them, the said commissioners; and they also deny that the Monticello and Port Jervis Railway Company is irresponsible; and they also deny each and every of the statements, allegations, and denials in said complaint, contrary to or in any wise inconsistent with the herein above-stated allegations and denials. Wherefore the said defendants demand that said complaint be dismissed, and that costs be adjudged to the said defendants.

J. A. THOMPSON,
Attorney for G. M. Benedict & others, Com'r's, &c., Def'ts.

SULLIVAN COUNTY, *ss:*

, of said county, being duly sworn, says that the matters, denials, and statements in the foregoing answer are true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes them to be true, and that he is one of the commissioners of the Town of Thompson, named in said answer as defendants.

G. M. BENEDICT.

Sworn to August 3d, 1869, before me.

D. G. STARR,
Justice of the Peace.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WM. H. CADY, NATHAN S. Hamilton, commissioners of the town of Thompson, &c., & F. C. Crowley, C. L. Colt, & Wm. D. Colt, The Monticello & Port Jervis Railway Company, and the Town of Thompson, def'ts.

The defendant, Frederick C. Crowley, by Arch'd C. Niven, his attorney, answers the complaint of the pl'ffs herein, and denies each and every allegation therein (except as hereinafter answered), for the reason that he has not sufficient knowledge of the allegations in the complaint on which to found a belief.

The said defendant, Crowley, admits that he and the said C. L. Colt and W. D. Colt did enter into a contract with the said railway company, by the terms whereof they did agree to build the said railway from Monticello to Port Jervis, and did further agree to receive in part payment for said work, as cash, the bonds of the Town of Thompson, issued pursuant to law, and the residue in money, which bonds were taken at par value. That shortly after the making of said contract the said C. L. Colt and D. W. Colt sold all their interest in the said contract to this defendant, and this defendant avers, as a matter of defense, that the said defendants, C. L. Colt and W. D. Colt, had no interest in the contract at the time of the commencement of this suit, nor at any subsequent time, and are therefore improperly joined as defendants herein. This defendant, further answering, says that pursuant to the provisions of the contract made with the said railway company, he has proceeded in good faith to construct said railway, and has now employed upon the work and engaged in its construction about four hundred persons, and about eight miles of the railway is built and graded ready for the ties to be laid; that heavy contracts are made for the construction of said railway, and he has intended and does intend to perform the contract on his part, and he denies all knowledge of any fraudulent issue of bonds or any other fraud connected with the issuing or sale of said bonds. The said defendant therefore asks that the complaint be dismissed with costs.

A. C. NIVEN,
Attorney.

SULLIVAN COUNTY, *ss:*

Frederick C. Crowley, being duly sworn, says that he is the defendant in this action; that he has heard the foregoing answer read, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated on information and belief; and as to those matters he believes it to be true.

F. C. CROWLEY.

Sworn to July 10, 1869, before me.

W. L. THORNTON,
Notary Public.

Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne and others,
against
GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners, &c., The Monticello and Port Jervis Railway Company, and others.

The defendant, The Monticello and Port Jervis Railway Company, by Clinton V. R. Ludington, its attorney, in answer to the plaintiff's, complaint herein, respectfully shows to this court and avers that the said company was organized in due form of law and for the purposes set forth in said complaint; that said company would not have been organized had not the said Town of Thompson, in said county of Sullivan, and the town of Deerpark, in the county of Orange, by a majority of their tax-payers, whose names appeared on the assessment-rolls of their respective towns for the year 1867, and who represented a majority of the real and personal property of the said town, appearing on said assessment-rolls for the said year (exclusive of non-residents), signed, acknowledged, and delivered the assent in writing set forth in the said complaint as required and directed by chapter 553 of the laws of 1868; that without the aid from these towns, as contemplated and provided by the said chapter, and as signified and expressed by the said tax-payers and property-holders through the assents signed
287 as aforesaid, it would have been unnecessary and wholly impracticable to have formed said company for such a purpose, for the want of capital or means to carry out its object; that such organization was predicated upon the faith and guaranty of said towns, expressed or intended to be expressed in and declared through the assents aforesaid, that they would furnish in aid of said railroad the money or its equivalent to an amount, on the part of said Town of Thompson, of $148,000, and on the part of the said town of Deerpark of $200,000, and on the part of said town of Forestburgh the sum of $23,000, and that the assents executed in manner and form aforesaid were so executed by the tax-payers aforesaid in the faith and belief that said company would be organized for the purpose of constructing a railroad leading from the village of Monticello, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark to the village of Port Jervis, in the county of Orange; that the said company, upon its organization, proceeded to make all necessary surveys, profiles, and maps of said railroad, and to locate the same according to the true intent and meaning of the act and chapter aforesaid, whose title was embodied in said assents, and according to the design, purpose, and intention of the tax-payers and property-holders of the said Town of Thompson, as well of the other towns aforesaid, who gave, executed, and delivered the same; and the said defendant, The Monticello and Port Jervis Railway Company, further answering, avers that prior to the giving and execution of the said assents by the tax-payers and property-holders of the said towns, as well as while the same were being given and executed, it was commonly intended and understood by such tax-payers and property-holders that the said company would be organized for the purpose aforesaid whenever the requisite assents, under the provisions of the act and chapter aforesaid, should be ob-

tained, and the means as contemplated therein and thereby should be assured to such company to be organized as aforesaid; that during the period aforesaid the formation of no other company was discussed or contemplated on the basis of said assents than the one subsequently organized, and which is the defendant aforesaid; that it is reasonably worth the sum of $650,000 to construct said railroad with all the necessary depots, engine-houses, platforms, and turn-tables, including iron, ties, and all other appurtenances necessary for a railroad, exclusive of right of way, real estate, and equipments; that the total amount of subscription by individuals and corporations to the capital stock of the said company exceeded fifteen per cent. of the aggregate amount of bonds issued by the said town in aid of the said railroad, and ten per cent. thereof had been duly paid to said company before said bonds were issued; that said subscriptions to said stock were made in good faith and by parties believed to be solvent and responsible; that many of said subscribers have already paid in cash fifty per cent. on their subscriptions to said company, which has been expended in purchasing the right of way for said road, engineering, and other necessary expenses connected therewith; that about fifteen thousand dollars have been expended by said company for the right of way for said railroad, and about fifteen thousand more will be required for a like purpose and for the purchase of other real estate needed by said company, and for paying damages to owners of real estate; and the defendant further shows that prior to the 11th of March, 1869, they had completed all the surveys, profiles, and estimates of work necessary in the construction of said railroad, and had publicly advertised for proposals to build the same complete for the rolling stock; that on the said 11th day of March they opened, at a meeting of their board of directors, all proposals received by them; that they ranged from $630,000 to $1,100,000; that the company reserved the right to exclude any or all proposals; that they accepted of the proposal of the said Wm. D. Colt & Co. to build and complete said road and all necessary improvements, buildings, and appurtenances belonging to a railroad, except rolling-stock, at and for the price and sum of $650,000, which was the estimated cost of the same made by Frank Cunningham, the engineer of said company; that said estimates and proposal were made upon a cash basis, and that being the lowest cash price the said company could obtain for the performance of said work; that on the said 11th day of March the said company entered into a contract in writing with the said Wm. D. Colt & Co. to take and build the said railroad, with all necessary turn-outs, switches, turn-tables, depots, engine-houses, water-tanks, platforms, and other necessary works and improvements ready for the rolling-stock, at and for the said sum of $650,000, the same to be done and completed in a manner acceptable to the said company and its engineer by the 1st day of June, 1870; that the said Wm. D. Colt & Co. proposed to take and accept as a payment of the said $650,000 from said company for the work aforesaid $25,000 in cash, $350,000 in the bonds of the towns of Thompson, Forestburgh, and Deerpark at their par value, and the balance in the first-mortgage bonds of the said road, and the said company accepted of said proposal, and stipulated in said agreement to pay the said Wm. D. Colt & Co. in the manner proposed as aforesaid; that said agreement was made in due form of law, and is binding and obligatory upon the parties thereto, and the said defendant, the railroad company aforesaid, further shows that afterwards, and before any bonds had been issued by the commissioners of said towns, or either

of them, the said company offered to take of the said commissioners of the said towns the said sum of $350,000 in these bonds issued in pursuance of the act aforesaid at their par value and deliver to said commissioners certificate of the capital stock in said company at its par value equal in amount to and representing the amount of bonds furnished by said towns respectively, and which are the bonds in part whose issue and use is the subject of this action; that the said commissioners of the said town of Thompson thereupon duly subscribed upon the stock-books of said company for $148,000 of the capital stock therein and delivered to said company a like amount in the bonds of said town, and the said company subsequently delivered to said commissioners a certificate for $148,000 of the capital stock in said company, representing one thousand four hundred and eighty shares of one hundred dollars each; that the whole transaction, both with said Wm. D. Colt & Co. and the said commissioners, was open, public, in good faith, and for the interest of the Town of Thompson and the said company; that the said company could, up to the commencement of this action, use the said bonds at their par value in payment for the liabilities of said company; that upon the strength and faith of said agreement work was commenced on the said road or the line thereof by the said Wm. D. Colt & Co. on the 15th day of April, 1869, and so vigorously prosecuted that when this action was commenced over three hundred men, besides teams, were actually employed in said work upon said road, and about eight miles, or one-third of the entire line, had been graded, and many thousand ties purchased for the road; that work has been opened on the heaviest part of said road; that about $75,000 had been expended on said road before this action was commenced;

288 that without the use of the bonds of the said Town of Thompson issued and delivered to said company as aforesaid, the said company cannot perform its contract with said Wm. D. Colt & Co., and they cannot and will not perform it on their part; and the said enterprise, so important to the material interest of said town and to the plaintiffs, must totally fail for the want of means to finish and complete it, and the said company must, as a consequence, fail to meet its obligations, and its stockholders will be involved in personal disgrace and pecuniary loss; that the building of said road was based upon the issuing of bonds by said towns in its aid, and not upon the subscriptions of individuals and corporations; that the subscriptions by individuals and corporations to the stock of said road were made only to meet the condition in the act aforesaid; that no further subscriptions to any extent can be obtained toward building and completing said railroad, nor can the towns or any of them be rebonded, or the requisite assents again be obtained from the tax-payers thereof to aid in the building of the same; that from first to last, all proceedings on the subject of building said road have been public, and the intention of the people and tax-payers aforesaid thus far carried out by said company and commissioners without objection or remonstrance by the said plaintiffs, or either of them, in any form or manner whatever, but with the assent and acquies'ence of all of them; wherefore the said defendant demands that the prayers of the said plaintiffs in the said complaint be denied, and that the same be dismissed with costs of this action.

C. V. R. LUDINGTON,
Attorney for R. R. Co.

SULLIVAN COUNTY, *ss:*

Thornton A. Niven, being duly sworn, says that he is the vice-president of the Monticello & Port Jervis Railroad Company, one of the defendants herein, duly elected in pursuance of the by-laws of the said company; that he has heard read the foregoing answer, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

THORNTON A. NIVEN.

Sworn to before me this 24th day of July, 1869.

D. G. STARR,
Justice of the Peace.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, The Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

The above-named defendant, the Town of Thompson, demurs to the plaintiffs' complaint herein:

First. Because it appears upon the face of the complaint that the said Town of Thompson (that is to say all the tax-payers of the said town of Thompson) is named as one of the plaintiffs or relators, and also that said Town of Thompson is named as one of the defendants, and is improperly joined as a defendant.

Second. No action can be maintained in the name and on the part of all other tax-payers as plaintiffs; and the said defendant, the Town of Thompson, further demurs to the said plaintiffs' complaint herein, because the said complaint does not state facts sufficient to constitute a cause of action against the said defendant the said Town of Thompson.

Dated July 23, 1869.

JAMES L. STEWART,
Attorney for the Defendant, the Town of Thompson.

At a general term of the supreme court of the State of New York, held in and for the third judicial district of the said State, at the capitol, in the city of Albany, on the 31st day of May, 1870.

Present, Hon. Henry Hogeboom, Rufus W. Peckham, Charles R. Ingalls, justices.

THE PEOPLE EX. REL. KILBOURNE ET AL.
against
THE TOWN OF THOMPSON, BENEDICT, ET AL.

The appeal in the above-entitled cause having been called in its order on the calendar, and after hearing Mr. A. J. Bush, of counsel for the plaintiff and appellant, in favor of the said appeal, and Mr. A. J. Parker, of counsel for the defendant and respondent, in opposition thereto, and the court having duly deliberated thereon,

It is ordered and adjudged that the order made at a special term of this court sustaining the demurrer herein, be, and the same is hereby, reversed and the demurrer overruled with costs, with leave to the defendants to answer on payment of costs.

(Copy)

JOHN McEWEN, *Clerk.*

Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles T. Kilbourne, Samuel G. Thompson, and others,
against
GILES M. BENEDICT AND OTHERS, COMMISSIONERS, The Town of Thompson and others, defendants.

SULLIVAN COUNTY, *ss:*

Timothy F. Bush, of said county, being duly sworn, says that no answer has been served in this action by or on behalf of the de-
289 fendants, C. L. Colt and Wm. D. Colt, or the Town of Thompson, and that the costs of the demurrer interposed by the said defendant, the Town of Thompson, has not been paid.

T. F. BUSH,
Counsel for Plaintiffs.

Sworn to and subscribed before me this 21st day of November, 1872.

BENJ. REYNOLDS,
Notary Public.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles T. Kilbourne, Samuel G. Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WM. H. CADY, NATHAN S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4th, 1868, and F. C. Crowley, C. L. Colt, and Wm. D. Colt, The Monticello & Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

This cause having been brought to trial before the court at a circuit court held at the court-house in Monticello, in and for the county of Sullivan, on the 20th day of May, 1872, and the court having heard the proofs of the respective parties, the same being uncontradicted, dismissed the jury and decides and finds the following facts:

First. That Charles T. Kilbourne and Samuel G. Thompson, the relators named, are and were resident tax-payers of the town of Thompson, in the county of Sullivan, at the time this action was commenced, in the month of June, 1869.

Second. That in the years 1868 and 1869, the defendants, William H. Cady, Giles M. Benedict, and Nathan S. Hamilton, were commissioners of the said town of Thompson, as alleged in the complaint, duly appointed and qualified under and by virtue of the provisions of an act of the legislature of the State of New York, passed the 4th day of May, 1868, being an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Forestburgh and Thompson, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," and were acting as such commissioners during the time aforesaid, after the passage of said act.

Third. That after the passage of the said act and during the month of May, 1868, a majority of the taxable inhabitants of the said town of Thompson, owning or legally representing more than a majority of the taxable property of the said town (excluding that of non-residents of said town) for the year 1867, and whose names appear upon the assess-

ment-roll the year 1867, did subscribe their names in writing to a written consent, of which the following is a copy: "We, the undersigned, tax-payers of the town of Thompson, county of Sullivan, and State of New York, in accordance with the provisions of an act entitled 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may be hereafter organized within three years from the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County,' passed May 4th, 1868, do hereby consent that the commissioner or commissioners appointed for the said town of Thompson, under and by virtue of the provisions of the said act, may borrow upon the faith and credit of the said Town of Thompson, the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment-roll of said town for the year 1867, at a rate of interest not exceeding 7 per cent. for a period not exceeding 30 years, and to execute therefor under their hands and seals the bonds of the said Town of Thompson, and to do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid.

"Dated May 16th, 1868."

That the consents signed as aforesaid were duly proved and verified by the oath of the assessor of the said town of Thompson, and filed in the office of the clerk of the county of Sullivan, on the 19th day of April, 1869; that no other or different consents have been executed or filed in the said clerk's office; that of the persons so signing, 25 were females, and one who signs as an administrator of an estate in said town.

Fourth. That the defendants, "The Monticello & Port Jervis Railway Co. is an association and corporation formed under the laws of the State of New York, and was organized by filing its articles of association in the office of the secretary of state of the State of New York, on the 2d day of September, 1868, for the purpose of constructing, maintaining, and operating a railway for public use in the conveyance of persons and property from the village of Monticello, in said county of Sullivan, to the said village of Port Jervis, in the said county of Orange, through the towns of Thompson, Forestburgh, and Deerpark aforesaid, which road is to be maintained and operated for ninety-nine years; that the capital stock named in the said articles of association is $500,000; that the actual amount of the stock subscribed for and taken is $430,000, of which $60,000 is taken and held by private individuals, $148,000 by the said commissioners of the town of Thompson, and $223,000 by the commissioners of the said towns of Forestburgh and *and* Deerpark.

Fifth. That on the first day of May, the said commissioners, attempting to act in behalf of said town, subscribed and executed 148 bonds, numbered from 1 to 148, inclusive, in denomination and amount of $1,000 each, and which said bonds were in the words and figures following, to wit:

"No. .] UNITED STATES OF AMERICA. [$1,000.

"THE TOWN OF THOMPSON, COUNTY OF SULLIVAN, STATE OF NEW YORK.

"This bond is a valid security, being issued by virtue of an act entitled

'An act to authorize certain towns in the counties of Sullivan
290 and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May 4th, 1868, and of the act amendatory thereof, passed April 1st, 1869.' Know all men by these presents that the Town of Thompson, in the County of Sullivan and State of New York, by the undersigned, commissioners thereof, by virtue and in pursuance of the acts above entitled and referred to, and for value received in the stock of the Monticello & Port Jervis Railway Company, promises to pay the bearer the sum of one thousand dollars, on the first day of March, in the year 1899, at the National Union Bank, in Monticello, N. Y., with interest at 7 per cent. per annum, payable semi-annually, on the first day of March and September in each year, at the National Hanover Bank of the city of New York, on the presentation and surrender of the coupons for such interest. In witness whereof we have hereunto set our hands and seals, and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this first day of May, in the year one thousand eight hundred and sixty-nine.

"G. M. BENEDICT,
"N. S. HAMILTON,
"W. H. CADY,
"*Commissioners.*

"Registered in the county clerk's office of the county of Sullivan this first day of May, 1869.

"C. L. MORRIS,
"*County Clerk.*"

Sixth. That on the said 1st day of May, 1869, the said commissioners executed and attached to each of the said bonds 59 coupons, numbered from 1 to 59, inclusive, for the payment of the interest semi-annually, according to the provisions of the said bond, which coupons were signed by the said William H. Cady, under the directions of said commissioners; that on the said first day of May, 1869, the said commissioners caused the said bonds, with the said coupons attached, to be registered in the office of the clerk of the said county of Sullivan by the county clerk of the said county.

Seventh. That thereafter, and before the 22d day of October, 1869, the said commissioners did subscribe, in the corporate name of the said Town of Thompson, for the stock of the said railway company to the amount of $148,000, and did deliver to the said railway company, in exchange for the said stock, the said 148 bonds, with the said coupons attached, so executed and registered as aforesaid; that the said railway company did receive the said subscription to their stock, and did deliver to the said commissioners the stock of the said company in exchange for the said bonds to the amount of $148,000.

Eighth. That none of the said bonds issued as aforesaid by the said commissioners were sold or disposed of by them for money, but were issued and delivered to the said railway company in exchange for the stocks of the said company, which stocks were received by the said commissioners in consideration for the said bonds.

Ninth. That before the commencement of this action the said railway

co. had surveyed and located their line of road through the said towns, from the village of Monticello to Port Jervis, and had expended in surveying and for right of way and work on the road the sum of $250,000. And that on the 11th day of March, 1869, the said railway company entered into a written contract with the defendants, F. C. Crowley, C. L. Colt, and William D. Colt, by the terms of which said Crowley and Colts agreed to furnish material and construct the said road for the sum of $718,750 and to receive from the said railway company in payment therefor $25,000 in cash, $350,000 in town bonds of the towns along the line of the road, and $343,750 in the first-mortgage bonds of the company at their par value, which payment the said railway company agreed to make in the manner above stated on the fifth day of each and every month according to the monthly estimates of the work, commencing with the 5th day of May, 1869, retaining always 20 per cent. of said estimates as a security for the performance of the contract; that thereafter and in pursuance of the said contract all of the said bonds issued as aforesaid by the said commissioners of the said Town of Thompson were delivered by the said railway company to the said defendants, Colts and Crowley.

That the defendants, Cady, Hamilton, and Benedict, during all the time they were acting as commissioners as aforesaid, were stockholders and directors of the said railway company. The court decided and held as conclusions of law:

First. That the consents of the tax-payers, signed and filed as before stated and upon which the said commissioners proceeded to issue the said bonds, were defective and invalid and insufficient to authorize the issue of the said bonds by the said commissioners.

Second. That the bonds and coupons attached, issued by the said commissioners, were unauthorized and are invalid and void and of no effect as obligations against the said Town of Thompson.

Third. That the said bonds should be delivered up and cancelled.

Fourth. That the Town of Thompson acquired no right of title to the stock of the Monticello & Port Jervis Railway Company, which was subscribed for and delivered to the said commissioners, and that the said stocks shall be surrendered to the said railway company.

Fifth. That each, every, and all of the defendants, or either and any of them, be forbidden and perpetually restrained and enjoined from using, loaning, or selling said bonds, or any of them, and that the defendants, the said commissioners, be enjoined and restrained from executing any other bonds on behalf of their town upon the strength of the said consents and until the necessary consents as provided by said acts of the legislature are obtained and filed in due form of law. And that a decree and judgment of this court be entered and recorded in accordance with this decision, and that the plaintiffs have and recover a judgment against the defendants for the costs of this action.

C. R. INGALLS,
Justice of Supreme Court.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles T. Kilbourne, Samuel G. Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WM. H. CADY, NATHAN S. Hamilton, commissioners of the town of Thompson, in the County of Sullivan, appointed under the act entitled "An
291 act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4th, 1868, and F. C. Crowley, C. L. Colt, and Wm. D. Colt, The Monticello & Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

The defendant, the Town of Thompson, having interposed a demurrer to the complaint herein, and the said demurrer having been overruled by this court at a general term thereof, with leave to the said defendant to answer the complaint upon the payment of the costs of the demurrer, and the said defendant having failed to answer the said complaint, and the issues as to all the other defendants having been regularly brought to trial at a circuit court held in and for the county of Sullivan, in May, 1872, and the decision of the court therein having been duly filed, and no exceptions to the said decision having been served or filed, and no case made:

Now, on motion of F. C. Barlow, attorney-general, it is adjudged, decreed, and determined that the bonds heretofore issued by Giles M. Benedict, William H. Cady, and Nathan S. Hamilton, commissioners, and registered in the Sullivan County clerk's office, in miscellaneous records, page 427, May 1st, 1869, for one hundred forty-eight thousand dollars, which said bonds are described in the complaint in this action, are, and each of said bonds is, void and of no effect, and were issued by the said commissioners without authority of law therefor; that the certificate and certificates of stock issued by the Monticello and Port Jervis Railway Company to the Town of Thompson, and to the said commissioners for the said town in consideration of said bonds, and in exchange for the same, shall be delivered up to the said railway company and cancelled, and that the said bonds and each of them shall be delivered up and cancelled. And it is further decreed, ordered, and adjudged that each and every and all of the defendants, or either and any of them, be forbidden and perpetually enjoined and restrained from issuing, loaning, or selling said bonds, or any of them, and that the de-

fendants and the said commissioners be perpetually enjoined and restrained from executing any other bonds on behalf of the Town of Thompson upon the strength of the consents now on file in the said clerk's office, which said consents are referred to and described in the complaint herein, and are also adjudged to be insufficient and of no effect. It is further ordered and adjudged that the plaintiffs recover of the defendants in this action the sum of six hundred and three dollars for the costs and disbursements of this action, and that the plaintiffs recover of the defendant, the Town of Thompson, the further sum of one hundred and eighteen dollars for costs and disbursements of the said demurrer.

Dated November 21st, 1872.

F. W. JOHNSTON, *Clerk.*

STATE OF NEW YORK,
Sullivan County Clerk's Office, ss:

I, Lewis N. Stanton, county clerk in and for said county, do hereby certify that I have compared the foregoing copy of a judgment-roll, filed Dec. 4, 1872, at 11½ a. m., with the original now remaining on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In testimony whereof I have hereunto set my hand and affixed the seal of said county this 2d day of August, A. D. 1879.

[L. S.] L. N. STANTON, *Clerk.*

292 There were never any consents filed except those produced here in evidence.

FRANCIS MARVIN was sworn as a witness for the defendant, and testified as follows:

I was treasurer of the Monticello & Port Jervis Railroad Company, during the whole lifetime of the company, from 1868 to 1873. I recognize the receipt given for the bonds; it is a receipt I gave for the Thompson town bonds. This was the first parcel of bonds I received. I cannot state the dates that these bonds were delivered by the railroad company to the contractors.

Q. Give me the dates at which you took the bonds from Mr. Fairchilds.

A. On the 10th of May, 1869, I received $15,000.

Q. I ask you when you received these bonds from Mr. Fairchilds, the assistant treasurer of the company.

A. I cannot say whether I received them from Mr. Fairchilds
293 or the commissioners. I have no record of that.

Q. You are able to state the dates when you, as treasurer of that company, first came into possession of the bonds?

A. No, sir. I can only give you the dates on which the credits appear on my books. I kept the books, and the entries are made out on or about the dates stated, but whom they came from or how I got them I cannot say *say* now.

Q. You kept a book as treasurer of the railroad company?

A. Yes, sir.

Q. And you kept an account of the different lots of Thompson bonds which were delivered to you as treasurer?

A. Yes, sir.

Q. And the dates?

A. Yes, sir.

Q. Now I want you to state those dates, and the number of bonds that you received at each date.

294 (Objected to. Objection overruled and exception taken.)

A. On the 10th of May I received $15,000; on the 31st, $1,000; on the 24th of June, $34,000; on the 9th of August, $16,000, and again on the same date $34,000; on the 23rd of October, $48,000; making, in all, $148,000.

Q. Can you state the time that you parted with those bonds?

A. No, sir; it is impossible to state that.

Cross-examined by Mr. HILL:

Q. From whom did you receive them?

A. I can't say from whom I received them.

Q. You may have received part of them, or the whole of them, from the assistant treasurer?

A. I may have done so, and part of them from the commissioner.

Q. What was his name?

A. The assistant treasurer was Eli Fairchild.

295 Q. Now, can you tell us about when you parted with these bonds as treasurer?

A. No, sir. They were thrown into the general fund, and they were paid out indiscriminately.

Q. As cash?

A. As cash.

COURT. Q. Between what periods were they paid out?

A. From that time for two or three years, until the conclusion of the enterprise.

COURT. Q. From 1869 to when?

A. To 1872 or 1873.

Q. Were they all paid out by the 1st of January, 1872?

A. No, sir.

Q. What portion of them was paid out subsequent to that time?

A. About $6,000, I think.

Q. Remained on hand?

A. Yes, sir.

296 Q. What portion was paid out prior to January, 1871?

A. I cannot tell you.

Q. Nearly the whole, was it not?

A. Nearly the whole.

Q. About $6,000 remained then, probably?

A. Yes.

Q. What portion was paid out prior to January, 1870?

A. The larger part of them.

Q. $6,000 remained on hand for some time?

A. Yes, sir.

Q. And they were all used in the construction of the road?

A. Yes, sir.

Q. Paid to the contractors, as you have stated, for so much cash on their contract?

A. Yes, sir.

Redirect examination:

297 Q. You say they were thrown into the general fund, and paid out as cash; were they paid out by the company to any parties, except to the contractors who were constructing the road?

A. Yes, sir. In order to answer that question I must enlarge upon it a little. From the very beginning of the work the contractor was

embarrassed by a want of capital; and it had not been six months before he urged and solicited me by all means to convert these bonds into cash, and I did so.

COURT. Q. From time to time?

A. Yes, sir. All the time it was a herculean task. I had to raise $1,500,000 and a cash subscription of about $150,000. I was young and inexperienced; it seems like a nightmare now; it made me gray before my time. We spent a million and a quarter of dollars, and these bonds, together with the $500,000 first-mortgage bonds, built the road with the exception of $50,000 in cash. There was but one fund made of all these credits and cash.

298 Q. What I want to get at is this: By the terms of this written agreement the contractors were to take the bonds in payment of the work?

A. They were to take $350,000 of the town bonds.

Q. You say that at the solicitation of the contractors you converted the bonds into money?

A. I did.

Q. You did it at a discount?

A. Yes, sir.

Q. And under an arrangement by which the contractors were to bear the loss?

A. Yes, sir.

Q. You did it for the contractors?

A. Yes, sir.

Q. So that the effect of that is that the contractors had the avails of the town bonds?

A. Yes, sir.

Defendant rests.

299 Counsel for plaintiff here put in evidence an order dissolving the preliminary injunction, a copy of which is as follows:

At a special term of the supreme court held at the city hall in the city of Albany on the 27th day of July, 1869.

Present, Hon. C. R. Ingalls, justice.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles T. Kilbourne & others, plaintiffs,

agst.

GILES M. BENEDICT, WILLIAM H. CADY, & Nathan S. Hamilton, commissioners of the town of Thompson, &c., and others, defendants.

On reading the motion-papers on the part of the defendants, Giles M. Benedict, William H. Cady, & Nathan S. Hamilton, com-
300 missioners, &c., and the papers on the part of the plaintiffs, and after hearing A. J. Parker, esq., of counsel for the said defendants, and A. J. Bush, esq., of counsel for the plaintiffs, it is ordered that the order of injunction in said action, granted by Hon. R. W. Peckham, justice, bearing date on the 24th day of June, 1869, be, and the same is hereby, in all things vacated and set aside; and its said defendants have and receive ten dollars, costs of motion.

A true copy.

L. W. STANTON, *Clerk.*

Evidence closed.

Counsel for the defendant the' asked the court to direct a verdict for the defendant on the grounds:

1st. That the bonds were not executed under the hands and seals of the commissioners as required by statute, and they are therefore null and void.

2nd. There was no power conferred by the statute authorizing
301 any one of these commissioners to sign and execute these coupons.

3rd. There is no evidence that fifteen per cent. of the capital stock had been subscribed and paid as required by statute before the bonds could be issued.

4th. It appears from the testimony in the case, also from the face of the bonds that they issued in exchange for the stock of the railroad company, and that none of the bonds were issued for money, as required by the act.

5th. That the consents of the tax-payers were defective on their face.

6th. That the tax-payers never consented to the issue of bonds except for cash.

7th. That the plaintiff in this action is not a bona-fide holder, and did not become the owner of the bonds and coupons in the
302 usual course of trade, and he is not therefore entitled to maintain his action in this court.

8th. That the highest court of the State of New York has adjudicated the bonds absolutely void, which adjudication, being an interpretation of the State constitution and of local statutes of the State, is binding upon this court.

9th. That the judgment in the case of The People ag'st Benedict et al. is res adjudicata upon the issue in this action, and is binding upon the plaintiff.

The court refused to direct a verdict for the defendant; to which ruling the defendant excepted.

Counsel for the defendant then asked the court to submit the question to the jury as to whether the plaintiff was a bona-fide holder of the bonds, whether he was a real holder of them, and also whether he went into the purchase of these bonds in collusion with other parties.

303 The court refused to submit the cause to the jury; to which ruling and refusal the defendant excepted.

The court then directed a verdict for the plaintiff as follows:

In action No. 2 for $16,953.57.

In action No. 3 for $11,265.30.

To which direction of the court defendant duly excepted.

The defendant then moved for a new trial upon the minutes of the judge; which motion the court entertained, and ordered that sixty days be allowed to counsel for the respective parties in which to submit arguments on the motion, and that all proceedings be stayed until the decision of such motion.

After the expiration of sixty days, to wit, on the 12th day of August, 1879, the court filed a decision denying the motion for a new trial, and also filed a an opinion, a copy of which is as follows, viz:

304 U. S. circuit court, southern district of N. Y.

ORLANDO PERRINE
ag'st
THE TOWN OF THOMPSON.

WALLACE, J.:

Since the decision of this court in Cooper vs. The Town of Thompson, the highest court of the State has decided that the act of the legislature validating the irregularities of the commissioners in issuing the bonds was unconstitutional. And since that decision by the State court, *by the State court*, Judge Shipman, in this court, in an action between the present parties, adhered to the former decision of this court. The Supreme Court of the United States has sustained the validity of legislative acts of the same general character as the one in question (Thompson vs. Lee County, 3 Wall., 327; The City vs. Lamson, 9 Wall., 477; Retchel vs. Franklyn County, 22 Wall., 67), but in no case of which
305 I am aware, where the highest court of the State in which the action was tried had pronounced the legislative unconstitutional. But in the Town of Venice vs. Mendock (92 U. S., 494), the Supreme Court refused to consider itself required to yield its own conviction as to the right of a holder of municipal bonds *bonds* to recover, although the highest court of the State had decided that under the construction to be given to the statute under which the bonds had been issued there could be no recovery upon the bonds. Under the circumstances, I think, the more seemly disposition of the case requires me to adhere to the former decision of this court until the case is reviewed by the Supreme Court. If there were any difficulties in the way of such a review I should certainly suspend the determination of the case until the cases now in the Supreme Court involving the same question should be adjudged.

The case of the County of Warren vs. Marcy (97 U. S., 96) is a
306 *clo*clusive authority against the defense predic'ted upon the action and judgment in The People ex. rel. Kilbourne vs. Benedict.

The evidence would not have authorized the jury to find that plaintiff's purchase of the coupons in suit was colorable and fictitious merely. Quite likely he bought them mainly with the object of bringing suit upon them in this court, and intending if he collected to pay over a portion of the recovery to some other person, and perhaps the jury would have been justified in finding that the coupons were sold by their owner as well as bought by the plaintiff with this understanding.

Nevertheless, the plaintiff acquired the legal title. And this brings the motive of the transaction is not material. (MacDonald vs. Smalley, Peters, 620; Smith vs. Kernachan, 7th How., 198–216.)

The plaintiff is not an assignee, but acquired his title by delivery, and the coupons are promissory notes within the act of March 3rd,
307 1875. (Cooper vs. Town of Thompson and cases there cited.)

The motion for a new trial is denied.

And because none of the said exceptions so made do appear by the said record, the counsel for the said defendant did then and there, in due form, propose his aforesaid exceptions to the rulings, decisions, and refusals of the said court, and requested the said judge to put his seal to this bill of exceptions, containing the several matters, so as aforesaid, produced, given, and offered in evidence, and the objections and exceptions thus made and taken, according to the form of the statutes of the United States of America in such case made and provided, and the practice of the said *courts*.

And thereupon the said judge, at the request of the counsel for the said defendant, has hereunto affixed his name and seal to this bill of exceptions.

WM. J. WALLACE,
Judge of the Circuit Court.

SEPT. 30TH, 1879.

308 (Endorsed:) United States Supreme Court. The Town of Thompson, pl'ff in error, ag'st Orlando Perrine, def't in error. Bill of exceptions. U. S. circuit court. Filed Oct. 1, 1879. John I. Davenport, clerk.

309 Supreme Court of the United States, October term, 1879.

THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan, plaintiff in error,
against
ORLANDO PERRINE, DEFENDANT IN ERROR. } No. 3.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Town of Thompson, by T. F. Bush, its attorney, and says that in the record and proceedings aforesaid, and in the writ of error herein granted and issued, stated, or referred to, there is manifest error in this, to wit:

1st. The court had no jurisdiction of the subject-matter of the action, the bonds and coupons being not negotiated under the law-merchant.

2nd. The presiding justice erred in denying this plaintiff's re-
310 quest to direct a verdict for this plaintiff in error; to which exception was duly taken.

3rd. The presiding justice erred in directing the jury to render a verdict for this defendant in error; to which exception was duly taken.

4th. The evidence in the case is insufficient to support the judgment.

The bonds and coupons referred to in the complaint are null and void, having been signed by the commissioners and delivered to the railroad company in exchange for stock, without authority therefor, and in violation of the statute under which the commissioners were acting.

The said bonds and coupons were not issued under the hands and seals of the commissioners, as required by statute.

The amount of private subscription to the stock of the company required by the statute had not been obtained and paid.

The issue of bonds and the subscription to stock by the commissioners had been adjudged illegal and void, and the stock taken in consideration for the bonds cancelled by the judgment of the supreme court of the State of New York.

311 The bonds were not issued in conformity to the statute.

There was no power vested in one commissioner to issue coupons.

5th. The bonds and coupons having been adjudged illegal and void, by the highest court of the State of New York, cannot be made the basis of a recovery against the town in the hands of any party

6th. The judgment in the case of The People ex. rel. Kilbourne agst. Benedict et al. is res adjudicata, and binding upon all parties.

7th. Chap. 809 of the laws of New York of 1871, is void and of no effect.

And the said Town of Thompson prays that the judgment against the said Town of Thompson herein, may be reversed, annulled, and altogether held for naught, and that the said town may be restored to all things which it hath lost by occasion of the said judgment.

T. F. BUSH,
Attorney for the Plaintiff in Error.

312 STATE OF NEW YORK,
Sullivan County, ss:

Timothy F. Bush, of said county, and attorney for the Town of Thompson, plaintiff in error, aforesaid, being duly sworn, deposes and says that on the 18th day of September, 1879, he duly served the foregoing assignment of errors on James K. Hill, Wing & Shoudy, esq's, attorneys for the defendant in error, by depositing a copy of the same in the post-office at Monticello, N. Y., in a sealed envelope properly folded and directed to the said James K. Hill, Wing & Shoudy, esq's, the said defendants' attorneys, at their office at No. 37 Wall st., New York City, and with the postage thereon duly paid, and that there is a regular communication by mail between Monticello and New York City aforesaid.

T. F. BUSH.

Sworn before me September 18th, 1879.

PETER E. PALEN,
Notary Public in and for Sullivan County.

313 (Endorsed:) U. S. Supreme Court. The Town of Thompson, pl'ff in error, agst. Orlando Perrine, def't in error, No. 3, assignment of errors. T. F. Bush, att'y for pl'ff in error. Monticello, N. Y. U. S. circuit court. Filed Sept. 19, 1879. John I. Davenport, clerk.

314 Supreme Court of the United States.

THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan, plaintiff in error,
against
ORLANDO PERRINE, DEFENDANT IN ERROR. } No. 3.

And afterwards, to wit, on the second Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-nine, the said Orlando Perrine, by Henry T. Wing, his attorney, freely comes here into court and says that there is no error, either in the record or proceedings aforesaid; and he prays that the said Supreme Court of judicature, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

HENRY T. WING,
Attorney for Defendant in Error.

315 (Endorsed:) Supreme Court of the United States. The Town of Thompson, in the County of Sullivan, plaintiff in error,

against Orlando Perrine, defendant in error. No. 3. Joinder in error. Henry T. Wing, attorney for def't in error, 37 & 39 Wall street, New York City. U. S. circuit court. Filed Oct. 4, 1879. John I. Davenport, clerk.

316 *Bond for damages and costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ORLANDO PERRINE
vs.
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan. } No. 3.

Know all men by these presents that we, Charles Barnum, Le Grand Morris, P. R. Pelton, William B. Strong, A. M. Hoyt, Daniel Dows, Thomas Neil, Levi W. Barnum, Walter Hoyt, L. M. Crance, Morris A. Rundle, Jehial Clark, John Lord, J. P. Arkills are held and firmly bound unto the above-named Orlando Perrine in the sum of twenty-three thousand dollars, to be paid to the said Orlando Perrine; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the day of , in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-named Town of Thompson has prosecuted a writ of error to the circuit court of the United States for the southern district of New York in the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that, if the above-named Town of Thompson shall prosecute said writ of error to effect and answer all damages and costs if said defendant fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES BARNUM.	[SEAL.]
LE GRAND MORRIS.	"
P. R. PELTON.	"
W. B. STRONG.	"
A. M. HOYT.	"
DANIEL DOWS.	"
THOMAS NEIL.	"
L. W. BARNUM.	"
WALTER HOYT.	"
L. M. CRANCE.	"
M. A. RUNDLE.	"
JEHIEL CLARK.	"
JOHN LORD.	"
J. P. ARKILLS.	"

Sealed and delivered, and taken and acknowledged, this 27th day of Aug., 1879, before me.

GEO. McLAUGHLIN,
Notary Public in & for Sullivan Co.

317 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles Barnum, Le Grand Morris, Peleg R. Pelton, W. B. Strong, A. M. Hoyt, Dan'l Dows, Thos. Neil, L. M. Barnum, Walter Hoyt, L. M. Crance, M. A. Rundle, Jehiel Clark, John Lord, J. P. Arkills, being duly sworn, each deposes and says that he is worth the sum of two thousand dollars, over and above all his just debts and liabilities and above property exempt from execution.

CHARLES BARNUM.
LE GRAND MORRIS.
P. R. PELTON.
W. B. STRONG.
A. M. HOYT.
DANIEL DOWS.
THOMAS NEIL.
L. M. BARNUM.
WALTER HOYT.
L. M. CRANCE.
M. A. RUNDLE.
JEHIEL CLARK.
JOHN LORD.
J. P. ARKILLS.

Sworn to this 27th day of Aug., A. D. 1879, before me.
GEO. McLAUGHLIN,
Notary Public in & for Sullivan Co., N. Y.

STATE OF NEW YORK,
Sullivan County Clerk's Office, ss:

I, Lewis N. Stanton, clerk of said county and of the courts of record held therein, do certify that George McLaughlin, before whom the foregoing affidavits & acknowledgments were made, and who has thereunto signed his name, was, at the time of so doing, a notary public in and for the county and State above named, commissioned and sworn; that all his official acts as such are entitled to full faith and credit, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 9th day of Sept., 1879.

[SEAL.] L. N. STANTON, *Clerk.*

(Indorsed:) U. S. circuit court. Orlando Perrine vs. The Town of Thompson, in the County of Sullivan. No. 3. Bond for damages and costs on .

Approved as to form and substance, Sept. 11, 1879.
SAM'L BLATCHFORD,
Judge of the Circuit Court, South'n Dist. of N. Y.

U. S. circuit court. Filed Sep. 11, 1879. John I. Davenport, clerk.

318 UNITED STATES OF AMERICA, *ss:*

To Orlando Perrine, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October, 1879, pursuant to a writ of error filed in the

clerk's office of the circuit court of the United States for the southern district of New York, wherein the Town of Thompson, in the County of Sullivan, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 11th day of September, 1879.

319

SAM'L BLATCHFORD,
Judge of the Circuit Court Court *of the U. S.,*
Southern District of New York.

STATE OF NEW YORK,
Sullivan County, ss:

Timothy F. Bush, of said county, being duly sworn, deposes and says, that on the 12th day of September, 1879, he duly served the within citation on Messrs. James K. Hill, Wing & Shoudy, the attorneys for Orlando Perrine, the defendant in error therein named, by delivering a copy thereof personally at their office, No. 37 Wall street, New York, and leaving the same at said office with a clerk of said attorneys, and for them.

T. F. BUSH.

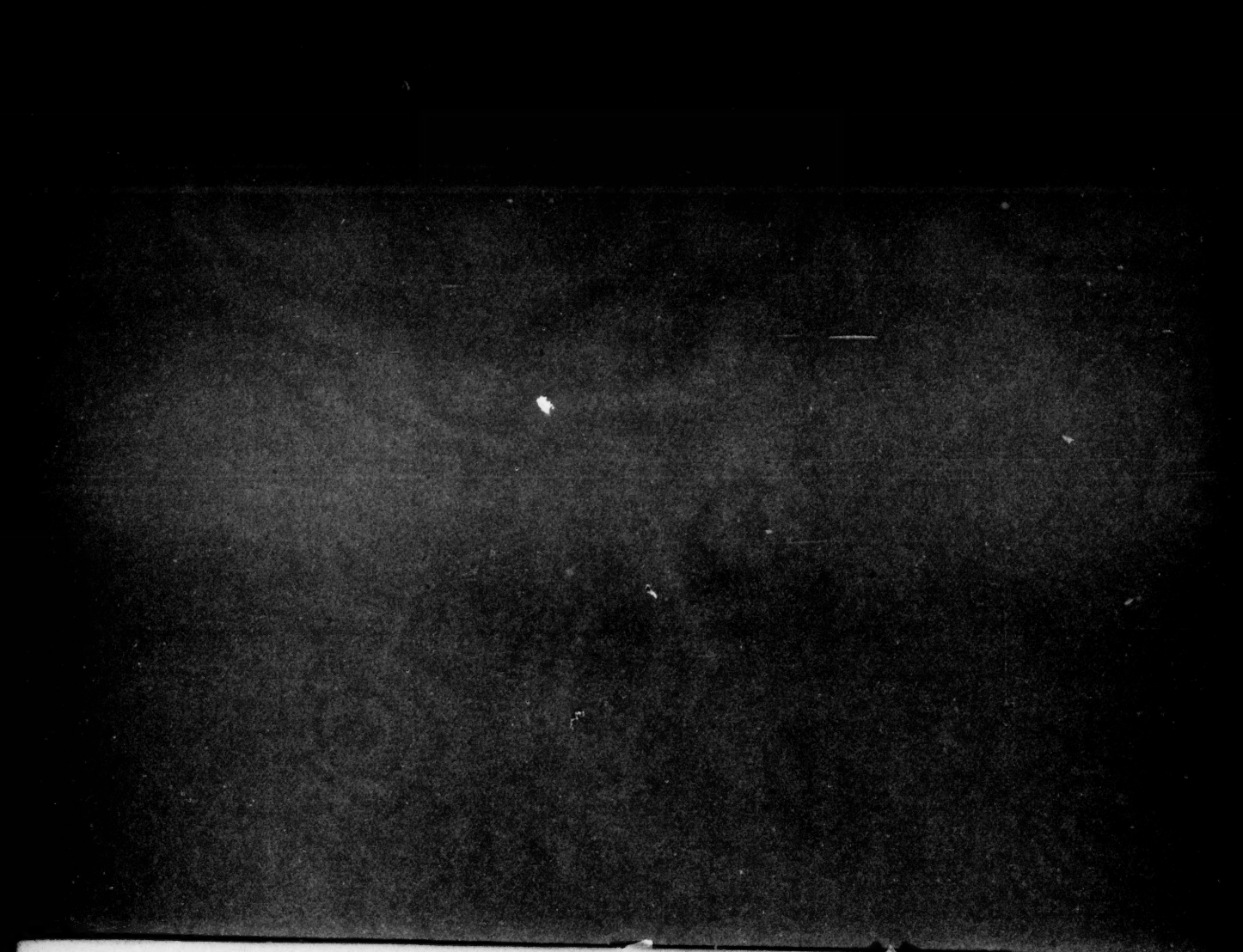
Sworn before me Sept. 18th, 1879.

PETER E. PALEN,
Notary Public in & for Sull. Co.

(Indorsed:) A. 245. U. S. circuit court, southern dist. of N. Y. Orlando Perrine ag'st The Town of Thompson. No. 3. Citation.

U. S. circuit court. Filed Sept. 19, 1879. John I. Davenport, clerk.

(Indorsement on cover:) No. 346. The Town of Thompson, in the County of Sullivan, plaintiff in error, vs. Orlando Perrine. S. New York C. C. U. S. Filed 15th October, 1879.



16589

OFFICE SUPREME COURT U.S.
FILED
OCT 4 1882
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

THE TOWN OF THOMPSON,
PLAINTIFF IN ERROR,

Against

ORLANDO PERRINE.

OCTOBER TERM, 1882. NO. 75.

Brief of T. F. Bush for Plaintiff in Error.

JOHN WALLER, Printer, Monticello, N. Y.

Supreme Court of the United States.

THE TOWN OF THOMPSON, PLAINTIFF IN ERROR,

Against

ORLANDO PERRINE.

NO. 75. OCTOBER TERM, 1882.

This is a writ of Error to the Circuit Court of the United States for the Southern District of New York.

The action is upon coupons from bonds alleged to have been issued by the plaintiff in error in aid of the *Monticello and Port Jervis Railroad.*

A verdict was directed against the town, to which exception was taken. This exception presents the case for review on its merits. *Page* 126.

The bonds purport to have been issued under a *special statute* by commissioners appointed pursuant to the statute for that purpose. No power whatever was conferred upon the town as a *corporate body.* The statute is set out in the record at page 126.

The power is conferred by *section* 2 in these words: "It shall be lawful for said commissioners to borrow on the faith and credit of their respective towns and villages aforesaid, such sums of money, not exceeding thirty-three per cent. of the valuation of said town, to

be ascertained by the assessment rolls thereof respectively for the year eighteen hundred and sixty-seven, for a term not exceeding thirty years at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor *under their hands and seals respectively.*"

The restriction upon the exercise of the power is contained in *section* 3, in the following terms: "The said commissioners authorized by this act may, in their discretion, dispose of such bonds or any part thereof to such persons or corporations and upon such terms as they shall deem most advantageous for their said towns, *but not for less than par*, and the *money* that shall be raised by a loan, or sale of such bonds, shall be invested in the stock of such company now organized or that may hereafter be organized, * * * and said *money* shall be applied and used in the construction of such road as aforesaid, its buildings and necessary appurtenances, and for no other purpose."

This section was construed by the Court of Appeals of New York as containing a *substantial prohibition* of an issue of bonds in exchange for railroad stock.

The tax-payers in giving the consent of the town, were careful to limit the transaction to an issue of bonds for money. (Page 98.) It is a consent, that the commissioners "may borrow on the faith and credit of said town of Thompson the sum of $148,000, * * * and execute therefor under their hands and seals the bonds of said town."

The commissioners in direct violation of the statute, and of the consent given thereunder, issued one hundred and forty-eight promises to pay of the denomination of $1000 each, none of which were under their seals, and none of them were given for money borrowed, or sold for money, but they were all traded to the railroad company for an equal amount of its capital stock.

The Court of Appeals of New York in *Horton vs. The Town of Thompson*, 71 *N. Y.*, 513, construing the 3*d section* of the statute, and the consent, and the ac-

tion of the commissioners taken thereunder, said:

"The only authority given to the commissioners by this consent was to proceed according to the provisions of the act of 1868; that is, to borrow money by disposing of the bonds at not less than par, and to invest the money so raised in the stock of a railroad company. They were not authorized to issue bonds in exchange for the stock of any railroad company; such a proceeding was wholly unauthorized, and was in substance prohibited by the act referred to in the consent, and would defeat one of its most important objects."

The court also cites an unbroken line of decisions in that court to the same effect, extending back to a period long anterior to the time when these bonds were issued.

The railroad company having thus received the bonds, entered into a contract for the construction of the road, *nominally* for the sum of $718,750, but which by the terms of the contract was to be paid in town bonds and first mortgage bonds of the road, except the sum of $25,000 which was to be paid in cash. (Fol. 258.)

A notable feature of this transaction is the almost entire absence of money, where the Legislature had carefully provided that money only should be furnished.

This contract shows the necessary result of the violation of the statute. The company having received bonds instead of money was forced to trade the bonds for labor and materials upon a basis which, for convenience, was called *par*.

It was said by Justice Selden (*obiter*) in *Gould vs. The Town of Sterling*, 23 *N. Y.*, 459, "If, however, what was done was the same in effect as if the money had been borrowed and paid over to the company, the difference in form would not be material."

The same idea was advanced by this court in *Scipio vs. Wright*, 101 *U. S.*, 665. In that case the railroad company sold the bonds to Howland, but it did not appear that he paid the full face of them to the

railroad company in *money*. This Court said: "So far as discharging the debt of the town for its stock subscription is concerned, and so far as relates to obtaining a full paid certificate, the transaction is, in legal effect, the same as if the money had been borrowed by the town directly and paid over to the company. And, if it had appeared affirmatively that Howland had paid the full face of the bonds and interest, without any discount, when he bought, every object which the statute could have had in view in enacting that it should be lawful for the town officers to borrow on the credit of the town a limited amount of money and pay it over to the railroad company, executing town bonds therefor, would have been accomplished. * * * It is quite conceivable that the purpose of such a direction, instead of allowing an exchange of the bonds for the stock taken, was that the railroad company might obtain an amount of money equal to the amount of the bonds. This was important to the company, to the town as a stockholder and to the public as interested in the projected railroad. If the bonds might be delivered directly to the company in payment of the stock, it might sell them at a discount. Thus it would fail to obtain the assistance in building its road which the Legislature contemplated it should have. Its stock would be *practically sold for less than par*, and it would not be worth as much to the town as it would be had all the money for which the bonds were given come into the company's treasury."

Thus it will be seen that in the judgment of both courts it is necessary in order to sustain a departure from the statute, that it should appear affirmatively that the railroad company received the face of the bonds in money.

If, as was said by this court, an exchange of the railroad stock for bonds is a practical sale of the stock for less than par, it follows that it is *a practical sale of the bonds for less than par*, and that an exchange of the

bonds by the railroad company for labor and materials is also a practical sale of them for less than par.

It may be safely asserted as a matter of common knowledge, that a contract for labor and materials upon a basis that payment is to be made in municipal bonds instead of money, cannot be as advantageously made, and be the same in effect as if it could have been made upon a cash basis; especially where as in this case the bonds were at a discount in the market. (Page 125.) To adopt the language of Justice Bronson in State of Illinois vs. Dellafield, 2 Hill, 172: "It is a question about *par value*, and if that does not mean in this case a dollar in money for every dollar of security, the wit of man cannot tell us what it does mean."

The statute is referred to in the bonds, and the fact that they were issued in consideration of railroad stock is also recited in them. Hence ignorance and innocence cannot be asserted as an element in the plaintiff's case. (Fol. 239.)

The reference to the statute, and the recitals, are as follows:

"This bond is a valid security, being issued by virtue of an act entitled an act, &c. * * * Know all men by these presents that the town of Thompson, in the County of Sullivan and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the act above entitled and referred to, *and for value received in the stock of the Monticello and Port Jervis Railway Company*, promises to pay the bearer the sum of one thousand dollars, &c."

It has been urged in the progress of this litigation that the recitals in the bonds, construed as a whole, convey the idea that the bonds were issued for money and at par value, pursuant to the statute, and that the town has value received for the money it promises to pay in the stock of the railway company.

There are many serious obstacles in the way of such a construction.

FIRST.

It is clear that the makers of the bonds did not intend to so state the facts. They did not as a matter of fact receive a dollar in money, but did issue them for the stock of the company precisely as recited, and they evidently intended to make a truthful recital of the facts. This construction cannot therefore prevail without converting a *truthful recital into a false one.*

SECOND.

No purchaser of the bonds would be justified in giving the recital the construction contended for, neither would it be likely to enter his mind in the absence of a suggestion *aliunde.*

By the plain intendment of the statute the commissioners were not to subscribe for stock until they should have received the money for the bonds. They must first have the money in hand, so as to be certain of the amount they have to invest. They had no power to contract a debt for stock subscriptions. The language of the statute is: "The commissioners respectively in the corporate name of each of their said towns or villages aforesaid may subscribe for and purchase stock of such company *to the amount they have severally borrowed as aforesaid.*" The bonds speak to the purchaser as of the date of their inception. It was, therefore, impossible for the commissioners to have complied with the statute, *i. e.*, sold the bonds for money and still have received the stock of the company at the time of issuing and parting with the bonds. Therefore, the construction contended for would render the recital false upon its face.

THIRD.

The first clause of the sentence recites the source of the power to issue the bonds; the second clause recites what they are issued for. The expression of the fact that they are issued for value received in the stock of

the company, excludes the idea that they were issued for anything else. A judicial interpretation of these recitals lies in the maxim *expressio unius est exclusio alterius.*

FOURTH.

The Court of Appeals of New York in the case cited gave an authoritive construction of these instruments in the following terms: "The bonds state upon their face that they are issued under the act of 1868, referring to it, and are executed by the commissioners appointed under said act. They do not purport to be issued by any town officer. They are payable to bearer and recite that they are given for value received in the stock of the Monticello and Port Jervis Railway Company. It thus appears upon the face of the bonds themselves that they were issued, not for money, but for stock in violation of the act and of the consent given thereunder. No one taking them could allege ignorance of this important fact."

The bonds bear date in May, 1869, and were delivered to the company about that date. On the 28th day of April, 1871, the Legislature of New York passed an act purporting to validate them, and to impose them as a debt upon the town.

The Court of Appeals of New York in January, 1878, and before the co
adjudged the act uncon
vs. Town of Thompson,
the principle declared i
Legislature of New Yor
legislation make a debt
of the State. At the time this decision was rendered $9240 of the coupons were held and owned by the plaintiff's vendor, a citizen and resident of the State of New York, and were purchased by the plaintiff below together with five of the bonds in May and June, 1878, in the city of New York. He purchased at an enormous dis-

FIRST.

It is clear that the makers of the bonds did not intend to so state the facts. They did not as a matter of fact receive a dollar in money, but did issue them for the stock of the company precisely as recited, and they evidently intended to make a truthful recital of the facts. This construction cannot therefore prevail without converting a *truthful recital into a false one.*

SECOND.

No purchaser of the bonds would be justified in giving the recital the construction contended for, neither would it be likely to enter his mind in the absence of a suggestion *aliunde.*

By the plain intendment of the statute the commissioners were not to subscribe for stock until they should have received the money for the bonds. They must first have the money in hand, so as to be certain of the amount they have to invest. They had no power to contract a debt for stock subscriptions. The language of the statute is: "The commissioners respectively in the corporate name of each of their said towns or villages aforesaid may subscribe for and purchase stock of such company *to the amount they have severally borrowed as aforesaid.*" The bonds speak to the purchaser as of the date of their inception. It was, therefore, impossible for the commissioners to have complied with the statute, *i. e.*, sold the bonds for money and still have received the stock of the company at the time of issuing and parting with the bonds. Therefore, the construction contended for would render the recital false upon its face.

THIRD.

The first clause of the sentence recites the source of the power to issue the bonds; the second clause recites what they are issued for. The expression of the fact that they are issued for value received in the stock of

the company, excludes the idea that they were issued for anything else. A judicial interpretation of these recitals lies in the maxim *expressio unius est exclusio alterius.*

FOURTH.

The Court of Appeals of New York in the case cited gave an authoritive construction of these instruments in the following terms: "The bonds state upon their face that they are issued under the act of 1868, referring to it, and are executed by the commissioners appointed under said act. They do not purport to be issued by any town officer. They are payable to bearer and recite that they are given for value received in the stock of the Monticello and Port Jervis Railway Company. It thus appears upon the face of the bonds themselves that they were issued, not for money, but for stock in violation of the act and of the consent given thereunder. No one taking them could allege ignorance of this important fact."

The bonds bear date in May, 1869, and were delivered to the company about that date. On the 28th day of April, 1871, the Legislature of New York passed an act purporting to validate them, and to impose them as a debt upon the town.

The Court of Appeals of New York in January, 1878, and before the commencement of these actions, adjudged the act unconstitutional and void. *Horton vs. Town of Thompson, supra.* This decision *reaffirmed* the principle declared in that court in 1873, that the Legislature of New York cannot by the sheer force of legislation make a debt for the municipal corporations of the State. At the time this decision was rendered $9240 of the coupons were held and owned by the plaintiff's vendor, a citizen and resident of the State of New York, and were purchased by the plaintiff below together with five of the bonds in May and June, 1878, in the city of New York. He purchased at an enormous dis-

count, paying 50 per cent. for the bonds and 30 per cent. for the coupons. (Fols. 263 to 267.)

The balance of the coupons, amounting to $3675, were detached from 21 bonds which the plaintiff below purchased within the State from resident citizens thereof in 1875, before this decision was rendered, but after the decision in *People vs. Batchellor*.

The plaintiff brought an action on the coupons which matured on the said parcel of 21 bonds, to and including March, 1878, and recovered a judgment, which was affirmed by this court May 2d, 1881. 103 *U. S.*, 806. As to the coupons included in that action see folio 58.

There is no evidence that any of the bonds or coupons purchased by the plaintiff below in May and June, 1878, were sold or changed hands from the time of the passage of the act of April 28th, 1871, until after it was directly adjudged void and of no effect by the highest court of the State.

On the 21st day of November, 1872, in an equity action, this entire issue of bonds was adjudged void, and the stock taken by the commissioners cancelled by a decree of the Supreme Court of New York. (See decree, page 122.)

The former action in this court was tried in May, 1878, before the plaintiff below made the purchase of that year. Upon that trial the decision in the *Horton* case was brought to his notice; also the decree in the equity case, it having been set out at length in the answer, and as a defense.

It will be observed that in this case, although the railroad has been constructed and put in operation, the town has not received what the statute contemplated it should have as a consideration for its bonds.

It was the legislative intent that the towns aiding in the construction of the road should, by virtue of the stock it should receive, substantially own and control

the road. Through the violation of law complained of this scheme was entirely defeated. By the judgment in the equity case the town was forced to surrender the stock, and the road—whatever it is—is owned and managed exclusively by a private company. *Section* 3 *of the statute; page* 13 *of the record.*

It will also be observed that the inhabitants of the town did not remain silent until the road was built and the bonds had gone into the market, but that they have constantly protested against the transaction ever since the bonds were thus fraudulently issued by the commissioners.

POINTS.

I

The bonds in controversy are void upon their face.

FIRST.

The commissioners appointed pursuant to the statute were *special agents*, and in no sense officers of the town; therefore, they had no *implied or incidental* power to bind the corporate body.

Sheboygan Co. vs. Parker, 3 *Wall.*, 96.
Wilson vs. Salamanca, 9 *Otto*, 504.

Bonds could be brought into existence only by the *hands and seals* of the commissioners; they would be equally as valid and complete without either as they are without both.

Avery vs. Springport, 14 *Blatchford*, 372.
Anthony vs. Jasper Co., 101 *U. S.*, 693.
McGarraham vs. Mining Co., 96 *U. S.*, 316.
Keohler vs. Black River Ins. Co., 2 *Black*, 715.
Bank of Pittsburgh vs. Neals, 22 *How.*, 96.

SECOND.

There was no power lodged in any quarter to issue bonds in exchange for railroad stock, and the tax-payers were not authorized to give the consent of the town to such an act; and they did not give such consent.

This was the settled and uniform construction of the statute by the highest court of the State at the time these bonds were issued.

Starrin vs. Town of Genoa, 23 *N. Y.*, 489.
Gould vs. Town of Sterling, 23 *N. Y.*, 456.

Subsequently the Court of Appeals construed *this*

statute as containing a *substantial prohibition* of such an issue of bonds.

Horton vs. Town of Thompson, 71 *N. Y.*, 513.

This construction by the Court of Appeals of New York has been repeatedly adopted by this court and applied in cases from that State.

Scipio vs. Wright, 101 *U. S.*, 665.
Town of Thompson vs. Perrine, 103 *U. S.*, 806.

By the settled law of this court, the decision in *Horton vs. Town of Thompson* construing this statute, is as much a part of the statute as if it were incorporated in it.

Leffingwell vs. Warren, 2 *Black*, 603.
Green vs. Neals Lesses, 6 *Peters*, 29.
Shelby vs. Guy, 11 *Wheaton*, 351.
Christy vs. Pridgeon, 4 *Wall.*, 203.
Elmwood vs. Marcy, 2 *Otto*, 292.
Fairfield Co. vs. Gallatin, 101 *U. S.*, 47.
Town of South Ottawa vs. Perkins, 4 *Otto*, 260.
Elmendorf vs. Taylor, 10 *Wheaton*, 159.
Lippincott vs. Mitchell, 4 *Otto*, 170.

It cannot be claimed that an act in violation of law is accompanied with any legal authority whatever.

THIRD.

There is no question of *bona fide* holding or of commercial law in the case.

The want of a seal is shown by the bond itself. If this shall be regarded as a defect in *form* merely, it was sufficient to put a purchaser upon inquiry.

Draper vs. Town of Springport, Oct. Term, 1881.

In that case the statute expressly authorized an issue of bonds directly to the R. R. Company in payment for stock, and there was therefore no violation of law in the transaction.

The illegal issue of the bonds for stock is recited

in the bond; by this recital every purchaser is bound.

McClure vs. Township of Oxford, 4 *Otto*, 429.
Bates vs. Winters, 7 *Otto*, 83.

It is the settled law of this court that, "every dealer in municipal bonds which upon their face refer to the statute under which they were issued, is bound to take notice of all its requirements." Also, "If a purchaser may be, as he sometimes is, protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true."

Also, that where the coupons refer to the bonds and purport to be for semi-annual interest accruing thereon "this puts the purchaser upon inquiry for the bonds and charges him with notice of all they contain."

McClure vs. Township of Oxford.
Bates vs. Winters, supra.

In the former action between these parties, decided by this court May 2d, 1881, after a careful consideration of all the questions presented in this case respecting the validity of these bonds, the court held that they were invalid in their inception, and that in the absence of the validating act passed nearly two years subsequent to their issue, payment thereof could not be enforced against the town. This Court then said:

"Although the act of 1868 required all bonds issued under its authority to be disposed of for not less than par, and their proceeds invested in the stock of the company, the commissioners exchanged those issued by the town of Thompson directly with the railroad company for an equal amount of the latter's stock. This was in violation of the statute as construed by the Court of Appeals of New York in several cases to which we had occasion to refer in *Scipio vs. Wright*, 101 U. S. 676. We there held,—following the decisions of the State Court (some of which were made long prior to the passage of the particular enactment now under examination)—that a purchaser of town bonds, having notice

that they were exchanged for stock in a railroad company in violation of a statute similar to that of 1868, was not a *bona fide* holder, and could not enforce payment against the town. We perceive no reason to qualify our ruling in that case, and therefore proceed to the consideration of other questions not embraced by that decision.

It seems, therefore, to be unquestionably established that the bonds in question were void when they were issued and put upon the market; void under the law of the state where they were made as it was then expounded by all the departments of its government, and administered in its courts of justice; and that they carried upon their face notice of their invalidity to every dealer in municipal bonds. They were void, not because of an *irregular execution of a valid power*, but because of a violation of a positive statute of the state. The only question, therefore, open for discussion seems to be whether such an act, not performed or concurred in by any town officer, and which is in substance *malum prohibitum*, and therefore not attended with any legal authority whatever, may be imposed upon the town as a corporate act, solely by legislative enactment.

II

The act of 1871 *is void for want of legislative power.*

It was so declared b
Court of Appeals of New
was the first and only ad
this statute, and whatev
rights of citizens of anotl
be questioned that it esta
applicable to those bonds, and is operative and effective upon all citizens of that State and upon all bonds held within its jurisdiction.

It was considered by this court in the former action between these parties, that as to the purchase of

in the bond; by this recital every purchaser is bound.

McClure vs. Township of Oxford, 4 *Otto*, 429.
Bates vs. Winters, 7 *Otto*, 83.

It is the settled law of this court that, "every dealer in municipal bonds which upon their face refer to the statute under which they were issued, is bound to take notice of all its requirements." Also, "If a purchaser may be, as he sometimes is, protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true."

Also, that where the coupons refer to the bonds and purport to be for semi-annual interest accruing thereon "this puts the purchaser upon inquiry for the bonds and charges him with notice of all they contain."

McClure vs. Township of Oxford.
Bates vs. Winters, supra.

In the former action between these parties, decided by this court May 2d, 1881, after a careful consideration of all the questions presented in this case respecting the validity of these bonds, the court held that they were invalid in their inception, and that in the absence of the validating act passed nearly two years subsequent to their issue, payment thereof could not be enforced against the town. This Court then said:

"Although the act of 1868 required all bonds issued under its authority to be disposed of for not less than par, and their proceeds invested in the stock of the company, the commissioners exchanged those issued by the town of Thompson directly with the railroad company for an equal amount of the latter's stock. This was in violation of the statute as construed by the Court of Appeals of New York in several cases to which we had occasion to refer in *Scipio vs. Wright*, 101 U. S. 676. We there held,—following the decisions of the State Court (some of which were made long prior to the passage of the particular enactment now under examination)—that a purchaser of town bonds, having notice

that they were exchanged for stock in a railroad company in violation of a statute similar to that of 1868, was not a *bona fide* holder, and could not enforce payment against the town. We perceive no reason to qualify our ruling in that case, and therefore proceed to the consideration of other questions not embraced by that decision.

It seems, therefore, to be unquestionably established that the bonds in question were void when they were issued and put upon the market; void under the law of the state where they were made as it was then expounded by all the departments of its government, and administered in its courts of justice; and that they carried upon their face notice of their invalidity to every dealer in municipal bonds. They were void, not because of an *irregular execution of a valid power*, but because of a violation of a positive statute of the state. The only question, therefore, open for discussion seems to be whether such an act, not performed or concurred in by any town officer, and which is in substance *malum prohibitum*, and therefore not attended with any legal authority whatever, may be imposed upon the town as a corporate act, solely by legislative enactment.

II

The act of 1871 *is void for want of legislative power.*

It was so declared by a direct adjudication of the Court of Appeals of New York in January, 1878. This was the first and only adjudication of that court upon this statute, and whatever may be its effect upon the rights of citizens of another State, we believe it cannot be questioned that it established the law of New York applicable to those bonds, and is operative and effective upon all citizens of that State and upon all bonds held within its jurisdiction.

It was considered by this court in the former action between these parties, that as to the purchase of

the twenty-one bonds by the plaintiff, a resident of the State of New Jersey, in 1878, upon the faith of this statute, and before any direct adjudication upon it was had, he was entitled to protection and should not be affected by this decision. (103 U. S., 806.)

We now respectfully urge the court to consider the effect of this adjudication upon the coupons embraced by this action which were held and owned within the State of New York at the time the adjudication upon this statute was made by the Court of Appeals of that State, and which the plaintiff afterwards purchased within the State.

FIRST.

As this was the first and only adjudication of that court upon the question of the validity of this statute, and as it is not the province of courts to make or repeal legislative enactments, it must be regarded as an authoritative adjudication that it never had a valid existence as a law.

The facts touching this point are as follows: These bonds were issued and put upon the market in 1869, when under the established law of New York as then expounded by all the departments of its government and administered in its courts of justice, they were invalid and there could be no *bona fide* holding of them. This statute was passed in 1871, and was adjudged void by the Court of Appeals in January, 1878. In May and June, 1878, the plaintiff below, bound by a knowledge of the facts, with this decision before him nullifying this statute, purchased this parcel of coupons amounting to $9240, within the jurisdiction of the State, at a discount of 70 per cent. There is no evidence that any of them were transferred or changed hands, even within the State, while this statute was an apparent law of the State. We respectfully submit that as to this purchase the case stands precisely the same as if the statute had not been passed. Certainly it cannot

be successfully claimed that a purchaser may have acted upon the faith of a statute in the face of an adjudication of the highest court of the State that it never had a valid existence.

The statute and the adjudication upon it must be read together.

In *Leffingwell vs. Warren*, 2 *Black*, 603, this court said:

"The construction given to the statute of a State is regarded as a part of the statute, and is as binding on the courts of the United States as the text."

Again, in *Christy vs. Pridgeon*, 4 *Wall.*, 203, the court said:

"The interpretation within the jurisdiction of one State becomes a part of the law of that State, as much so as if incorporated into the body of it by the legislature."

Again, in *Shelby vs. Guy*. 11 *Wheaton*, 367, the court said:

"Nor is it questionable that a fixed and received construction of their respective State laws in their own courts makes in fact a part of the statute law of the country, however we may doubt the propriety of that construction."

It has been recognized as fundamental law from the formation of the Government that the power of final adjudication upon questions of State law and State policy is lodged in the highest courts of the States respectively.

See cases cited under 1*st point.*

See also, *Amoskeag National Bank vs Town of Ottawa*, decided by this court May 8th, 1882, in which it is held that an act of the Legislature of a State which has been held by its highest court not to be a statute of that State, because never passed as its Constitution requires, cannot be held by the courts of the United States upon the same evidence between different parties to be a law of the State, although referred to in later

statutes of the State as an existing law, and assumed to be such in earlier cases in the State court, in which its validity was not and could not be controverted.

SECOND.

The rights of the plaintiff, he having no claim to protection as a *bona fide* holder, must be determined by the law of the State, that being the only source of authority for creating this class of obligations.

There is an apparent incongruity involved in the propositions that such contracts, void under the law of the State where they are made, may be transformed into valid obligations by the mere act of transporting them beyond State jurisdiction; that a statute resting solely in State authority may have a valid existence only where State authority ends. The language of this court in *The Town of South Ottawa vs. Perkins, supra,* has a forcible application to this case. The court said:

"That which purports to be a law of a State is a law, or not a law, according as the truth of the fact may be and not according to the shifting circumstances of parties. It would be an intolerable state of things if a document purporting to be an act of the Legislature could thus be a law in one case and for one party, and not a law in another case and for another party; a law to-day and not a law to-morrow; a law in one place and not a law in another place in the same State."

If this party can recover upon these coupons, his vendor, in whose hands they were utterly void, could have recovered also by shifting his residence to another State; then, indeed, the validity of this statute would depend entirely upon the "shifting circumstances of parties."

It will be seen that in every case where this court has departed from the established rule of judicial comity, it has done so upon principles of the commercial law for the protection of *bona fide* holders of commer-

cial paper. This case does not come within the exception to the established rule. The plaintiff purchased with full knowledge that the bonds did not represent contracts made by the municipal corporation, trusting exclusively to the statute of 1871 to create the obligation which he purchased, a statute which at the time had been condemned by Supreme authority. There is absolutely no known rule by which he could acquire any greater rights than would be accorded to his vendor.

It was said by this court in *Anthony vs. Jasper County*, 101 *U. S.*, 693, "Every person who deals with or through an agent assumes the risk of lack of authority in the agent to do what he does. Negotiable paper is no more protected against this inquiry than any other;" a *fortiori*, a dealer who trusts exclusively to a statute to create the obligation he buys, assumes the risk of lack of authority in the legislature to make the statute.

THIRD.

The decision of the Court of Appeals of New York in the *Horton case*, so far as it relates to the *creation of the contracts* through the action of the corporate body, or its agents, has received the approval of this court and is in harmony with acknowledged law. It is only in so far as it applies to the act of 1871 that it was held inoperative upon the plaintiff's purchase in 1875, before the decision was rendered. This holding rested mainly upon what seemed to the Court to be a conflict between the decision in the *Horton* case and the former decisions of that Court which preceded that purchase.

The decision of this Court in *Taylor agst. The City of Ypsilanti, October Term*, 1881, elucidates the principle which controlled the decision in the former case between these parties, and fully sustains our contention, upon this point, in the present case.

In that case the decisions of the State Court of Michigan, related exclusively to the enabling statute,

and to the contracts created in pursuance of it. The Opinion of the court by Mr. Justice Harlan, shows that the contract with the railroad company, and the delivery of the bonds in pursuance of it, were strictly in conformity to the statute; and that at the time the contract was made and the railroad company in performance of it had earned the bonds, the statute was held valid by the highest court of the State.

And the court applied the familiar principle that where a contract, when made, is valid under the law of the State as administered in its courts of justice, it cannot be invalidated by a subsequent decision. The rule applicable to a conflict of decisions in the courts of a State was stated by the court as follows: "The true rule is, to give a change of judicial construction in respect of a statute the same operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say make it prospective but not retroactive. After a statute has been settled by judicial construction, the construction becomes so far as *contract rights acquired under it are concerned* as much a part of the statute as the text itself, and a change of decision is to all intents and purposes the same in effect on contracts as an amendment of the law by means of legislative enactment."

The case at bar differs from the case just cited, in this important feature: Here, all the proceedings had under the enabling statute were in violation of it; the contract with the railroad company and the delivery of the bonds in pursuance of it, and the bonds themselves, were all void under the uniform decisions of the highest court of the State. In this respect there has been no change of decision; whatever conflict exists is in respect to the abstract question of *legislative power* involved in giving or withholding effect to this subsequent statute.

All contracts made under the *enabling* statute in 1869, including the contracts which the bonds themselves im-

part, were all made without reference to this validating statute, or to the decisions of the courts upon the question of its validity. It follows that all contracts or contract rights *acquired under the act of* 1871, or under the decisions relating to it, grow exclusively out of the *purchase or transfer of* the bonds. Therefore, if the earlier decision of the courts upon the question of legislative power, in regard to which the conflict is claimed to exist, are regarded as adjudications upon the statute of 1871 (?), the principle announced in the *Ypsilanti* case and which controlled the decision of the former case between these parties, applies—not to the original contracts which were void in their inception—but to such contracts of transfer or purchase as were made upon the faith of the statute before a change of decision occurred. It follows from the application of this principle that the contract of purchase made by the plaintiff after the decision of the Court of Appeals of New York in the *Horton* case must be controlled by that decision. And this, we respectfully submit, is the logical consequence and effect of the rule.

If there had been a direct adjudication of the Court of Appeals of New York, immediately after the passage of the act of 1871, declaring its validity, and no change, transfer, or purchase of these bonds occurred between such decision and the change in decision in 1878, could it be claimed that there was any contract or contract right *acquired* under the statute or the adjudication upon it, or that could in any possible view be affected either by the first or last decision? Neither decision could make or unmake the statute, nor make or unmake the original contracts. Or, could it be claimed that a contract of purchase made after the last decision, was a contract made, or contract right *acquired* under the former decision? We think not. The rule laid down in the case cited as to a change of decision, protects only such contracts, or contract rights as were *made* or *acquired* upon the faith of prior decisions.

FOURTH.

It has been urged that the case of *Horton vs. The Town of Thompson*, is not a case of statutory construction, in that the opinion given does not refer to any specific provisions of the State Constitution. To this we answer:

1*st.*

The decision nevertheless declares the law of the State, that power to enact this statute did not exist in the New York Legislature, and that the statute is not a law. This is sufficient against a party whose claim must be determined by the law of that State, and who purchased the paper sued upon with the decision before him.

2*nd.*

As the State Legislature is a creature of the organic law, it must be assumed that a decision declaring and defining its powers is the result of an investigation of the limitations and restrictions embraced in that law.

3*rd.*

The decision rests upon established State policy.

It will be observed that the statute in question lacks all the elements of a *remedial* statute. It was not passed to heal an *irregular execution* of a vested power.—The act complained of did not come within the scope of the power granted; it was *malum prohibitum*, and therefore *void* in law. The question presented, therefor, was not whether a *defective execution of a vested power* may be remedied by legislative ratification, but whether an *unauthorized and wrongful act*, in the absence of any condition in the statute upon which it might have been upheld, and without the form of consent on the part of the municipality, can be imposed upon the town as a corporate act. It is clear that such an enactment cannot be sustained without holding the doctrine, in its broadest sense, that municipalities may be *compelled* to contract, or assume debts of this character, and to be-

come stockholders in private companies by legislative force alone.

Such legislation is in contravention of the policy of the State as expressed in its organic law.

Art. 7, *section* 9 of the State Constitution provides as follows:

"The credit of the State shall not in any manner be given, or loaned to, or in aid of any individual, association or corporation."

Section 12 provides as follows:

"Except the debts specified in the 10th and 11th sections of this article, no debt shall be hereafter contracted *by*, or on behalf of the State, &c."

These provisions are construed by the courts of New York as applying only to transactions *by the State*, and not to a loan of credit or debts contracted *by municipal corporations* pursuant to statutory authority. And this construction has been given to similar provisions by this court.

In *Pine Grove vs. Talcott*, 19 *Wall.*, 166, a statute of Michigan was sustained on the ground that it *authorized the debt to be contracted by the municipality*. In considering the question the Court said: "In this case it is the Township and not the State that is concerned.—The State has done nothing and is in no wise liable."

Accepting this construction as the true one, it leaves no room to question the soundness of the decision in the *Horton* case. The statute we are considering is not, like the Michigan statute, *enabling* in its character; it does not *authorize* or contemplate any action whatever on the part of the corporation. It is, simply, an act of the State making a debt.

The fact that the debt does not affect the entire State is of no importance. The constitutional provisions are not directed to the character of the *debt*, but are aimed at *the debt-making power*. "*No* debt shall be hereafter contracted *by* or on behalf of the State," except as provided in the same section, the matter shall be sub-

mitted to and receive the sanction of a popular vote.

In *The People vs. Ingersoll*, 58 N. Y., on page 30, the Court of Appeals of New York, considering the relation of the State to certain contracts made by a municipal corporation, concludes as follows: "Debts contracted by municipalities by authority of the Legislature are contracted by them as principals and not as agents of the State. If this were not so, they would be clearly within the prohibition of Section 12 of Artice 7 of the Contitution."

4th.

The judgment in the former action is ineffectual as a *bar* or as an *estoppel.*

It is not a *bar* for the reason that the cause of action is different. It is not an *estoppel* for the same reason, and for the further reason that a party cannot be *estopped* from asserting or denying the existence of a law. In short, a statute cannot be created or nullified by *estoppel.*

Cromwell vs. County of Sac., 94 *U. S.*, 351.
Davis vs. Brown, 94 *U. S.*, 423.

III

If the decision in the former case between these parties would be regarded as establishing the right of the plaintiff to recover upon the coupons taken from the 21 bonds purchased by him in 1875, we respectfully pray the Court to consider whether the conclusion reached in that case that there is a conflict between the decision of the Court of Appeals of New York in the *Horton* case and the cases preceding it, does not result from a misapprehension of fact respecting the New York decisions.

The question involved is of vital importance, directly affecting the fundamental law and policy of a state government.

Whether it is a legitimate exercise of legislative power to *compel* municipalities to become stockholders in private companies, and to contract debts for stock

subscriptions, is a distinct question which we believe has not been decided by this Court in any reported case.

It seems to us from a careful examination of the cases cited in the opinion handed down, that the distinction which is traced through all the New York cases between *enabling* and *compulsory* statutes—between statutes which are *remedial* or *healing* in their nature, and those which are purely *creative*—escaped the attention of the Court. And we believe the Court will see from a re-examination of the cases that whatever conflict there may be upon the question decided in the *Horton* case, exists only in the individual opinion of the Judges; that there is none whatever in the judgments of the Courts.

The question was presented for the first time in the judicial history of New York in *The People ex rel. vs. Batchellor*, 53 *N. Y.*, 128. Where the power of the New York legislature to pass compulsory statutes of the character of the act of 1871, was denied.

In regard to this *Judge Folger* said in *Williams vs. The Town of Duanesburgh*, 66 *N. Y., page* 138: "I conceive that *The Bank of Rome vs. the Village of Rome*, and the line of cases following it, established the law for this State that the legislature, before the late amendment to the Constitution, had power to *authorize* a municipality to issue its bonds in aid of a railroad corporation, and that thus a rule of property has been set up which we may not disturb. The case of *The People vs. Batchellor*, 53 *N. Y.*, 128, in the judgment rendered did not conflict with those cases, as it declared only that the legislature had not power to *compel* a municipality to do such an act; a distinct question which had not before been passed upon by this Court."

The next time the question was presented to, and decided by the Court, was in the case of *Horton vs. The Town of Thompson*, where the principle in the *Batchellor* case was affirmed.

FIRST.

It will be observed that the *Horton* case presented the distinct question which was decided in the *Batchellor* case.

In violation of the statute and of the consent given therewith, the commissioners *unlawfully*, and therefore without a shadow of authority, issued the bonds in exchange for railroad stock. The fact of this illegal issue was brought to the attention of every purchaser by a recital of it in the bonds.

There was no *condition* in the statute which would uphold such an issue, and the tax-payers of the town were not empowered to give the consent of the town to such a transaction.

Therefore, the question presented is not whether *a defective* execution of a *vested* power may be remedied by legislative ratification; but the question is squarely presented whether an *unauthorized and wrongful act performed in the absence of any condition in the statute upon which it might have been upheld*, and without the form of a consent on the part of the town, can be imposed upon the town as a corporate act? It is clear that such an enactment cannot be sustained without holding the doctrine in its broadest sense that municipalities may be *compelled* to create a debt of this character, and to become stockholders in private companies by *legislative force alone.*

The decision of the New York Court of Appeals upon this question, we believe, accords with fundamental principles of government which are firmly rooted in the general jurisprudence of the country.

Municipal corporations in accepting and exercising such extraordinary grants of power, beyond the purposes of their organization, act as private corporations, and not as agencies of government.

Angel & Ames on corporations, Chap. 1, *Sections* 32, 33.
Bailey vs. Mayor of New York, 3 *Hill*, 539.

Towle vs. Common Council, 3 *Peters*, 609.
Lorillard vs. Town of Monroe, 11 *N. Y.*, 392.
Bank of U. S. vs. Planters' Bank, 9 *Wheat.*, 907.
The People vs. Batchellor, supra, and cases there cited.

The act of 1868 expressly confers upon those towns which may accept the grant the rights and privileges of private corporations in these words:

"The said towns or villages shall acquire all the rights and privileges, and be liable to the same responsibilities as other stockholders of said company." (Section 3, record page 13.)

In *County vs. Hiedekoper*, 98 *U. S.*, 98, it was considered by this court that the county, proceeding under a similar statute, had the *status* of a private company.

Therefore, accepting as sound the doctrine that the legislature may grant the power, and provide the manner in which whole communities may exercise the functions of private companies, *non constat*, it may compel them to do so.

The case of *Dartmouth College vs. Woodward*, 4 *Wheaton*, 688, established the law which must govern our American legislatures in this respect, and which, we believe, will be regarded by the Courts of this Country wherever and as often as the question may be presented. By that case it was established that while the King might *grant*, Parliament alone in the exercise of despotic power, could compel acceptance; and that *omnipotence* which is claimed by the British Parliament cannot be conceded to an American legislature.

The argument advanced by the learned Commissioner in *The Town of Duanesburgh vs. Jenkins*, 57 *N. Y.*, 188—which was confessedly *obiter*—that if the legislature may grant the power, it may compel its acceptance and direct its exercise, as it is the source of all power, if successful, would subject all private corporations to the unrestrained will of the legislature, as they are all organized, and receive all their powers to act as such from that source.

Thus it will be seen that two years before the purchase of the 21 bonds was made in 1875, the Court of Appeals of New York, in the *Batchellor* case, decided the very question affecting the validity of the act of 1871, that was decided in the *Horton* case. And none of this parcel of bonds were transferred between the passage of the statute and the decision in the *Batchellor* case.

SECOND.

All the cases from New York which are claimed to conflict with the doctrine held in the *Batchellor* and *Horton* cases, had reference only to the power of the legislature to tender to municipalities a grant of power, and by subsequent legislation to *heal* or *remedy* defects or *irregularities* occurring in the exercise of the power granted, and in none of them was this distinct question of *compulsory* legislation presented by the facts, or decided by the *judgment of the court.*

The earliest case cited in the opinion handed down, is *The Bank of Rome vs. The Village of Rome,* 18 *N. Y.*, 38, decided by the Court of Appeals of New York in 1858.

Two questions only were presented in the case: 1st Whether the *enabling* act—or the grant tendered by the legislature—was a legitimate exercise of legislative power. 2d. Whether the provision in the statute for obtaining a popular vote was a delegation of legislative power within the principle held in *Barto vs. Himrod,* (8 *N. Y.*, 483).

People vs. Mitchell, 35 *N. Y.*, 552, was decided in 1866. The question there presented by the facts was as to the validity of the confirmatory statute, the object of which was to *remedy* or *heal* defects in certain affidavits which had been filed; affidavits which came within the scope of the power granted, and which the *affiants* had full power and authority to make. The Court followed the decision of this Court in *Thompson vs. Lee*

Co., 3 *Wall*, 330, and adopted the principle there promulgated, a principle applicable exclusively to *remedial legislation*. A reference to the case of *Thompson vs. Lee Co.* shows that the irregularity complained of occurred in conducting an election authorized by the enabling statute, and clearly within the scope of the power granted—it was an irregularity occurring in the rightful exercise of vested authority. The doctrine was laid down by this Court as follows: "If the legislature possess the power to authorize an act to be done, it can by a retrospective act cure the evils which exist because the power thus conferred has been *irregularly executed.*" And in speaking of the power to pass enabling statutes, the Court said, the power "can be conferred in such a manner that the object can be obtained either with or without a popular vote." We respectfully submit that this has never been understood in any case to dispense with the necessity of obtaining the consent of the contracting party in some form. The fact that throughout the entire history of municipal bonding for railroads, no statute has been passed in any State without providing for obtaining the consent of the corporate body, either by a popular vote, or in some other manner, is quite conclusive proof that the necessity for obtaining such consent has been universally recognized.

The *Town of Duanesburgh vs. Jenkins*, 57 *N. Y.*, 188, was decided in the Commission of Appeals in January, 1874.

As it was considered by this Court, in the opinion given, that this decision overrules or changes the Court of Appeals' decision in the *Batchellor* case, we respectfully urge a re-examination of the decision; and we most respectfully submit that there is no conflict between the two cases, except such as grows out of the *individual views* of the learned Commissioner, embraced in that portion of the opinion prepared by him before the *Commission* received the opinion in the *Batchellor* case, and in regard to which he said: "It is not necessary, how-

ever, to go to this extent in the case before us." (Page 191.)

The opinion was subsequently materially modified with the avowed intention of conforming it strictly to the decision of the Court in the *Batchellor* case. The learned Commissioner distinctly disclaims the *necessity* and the *intention* of changing to any extent the decision of the Court of Appeals. We quote the language employed. He says: "At the June term of the Commission, and before the decision by the Court of Appeals in *The People vs. Batchellor*, we were prepared to give judgment in this case in accordance with what has now been said. The decision mentioned imposed upon us the duty of considering whether it conflicted with our views, and of conforming our judgment to that of the Court in case such conflict existed. But upon examination we find that the cases are fairly distinguishable from each other. In that case the application was for a *mandamus* to compel a town to become a stockholder in a railroad, and to issue its bonds in payment of the subscription price of the stock. No subscription had been made; no bonds had been issued, nor had any taxpayers of the town, nor any town board, or officer, or elector of the town ever assented, as the Court held, to the issuing of bonds or the subscribing for stock."

It is worthy of notice in this connection, that in the case of the *People vs. Batchellor*, precisely as in *Horton vs. The Town of Thompson*, the tax-payers had given a consent under a statute restricting an issue of bonds to a sale for cash and at par. The learned Commissioner here distinctly recognizes the soundness of the decision in the *Batchellor* case, holding that it was not a consent to the issuing of bonds in payment of stock subscriptions, or sufficient to uphold a statute compelling such an issue. He also distinctly recognizes the necessity of obtaining the consent of the town in some manner. Again, he says: "The case before us is essentially different in facts material to the rights of the parties,

from that decided in the Court of Appeals. Here the subscription has been made and the bonds have been issued by the consent and act at least of that representative of the town who is pointed out by the statute as the person who is to execute the bonds and make the subscription. This act by the Commissioners was consequent upon the consents of the taxpayers given, and proofs thereof filed, *in professed compliance with the enabling act, and consenting to the verg act of giving bonds which has taken place.*" Here the learned Commissioner again recognizes the necessity of obtaining a consent, and points out the very difference between the case he was considering and the *Batchellor* and *Horton* cases.— In neither of these cases was there any sort of consent "to the very act of giving bonds" which it was sought to compel by *mandamus* in one, and to impose upon the town by force of legislation in the other.

Further, it will be seen that the statute in the *Duanesburgh* case was passed to heal defects occurring in the affidavits which were filed; defects in a transaction coming clearly *within the scope of the power* vested in the officer making the affidavits. Also to establish a *rule of evidence* making the affidavits conclusive of the facts therein stated. As to this the learned Commissioner says, "It seems to me that this is a very different question from that presented to the Court of Appeals. The one is merely *remedial of defects occurring in the exercise of power legitimately conferred,* and making certain facts conclusive evidence of the *proper exercise of the power.* The other imposes, or attempts to impose, an obligation *without the consent and against the will of the party to be bound,* where no act of performance has taken place."

On page 194 of the Opinion the learned Commissioner cites the case of *The People vs. Mitchell* as sustaining the proposition. "If it originally rested with the legislature to fix the terms on which the towns might act, the same power will suffice to remit a part of the

conditions imposed, or to heal any defects which may have occurred in the performance by the town of those conditions." This was carrying the doctrine of the case cited to its utmost limits; still it does not in the least affect the principle held in the *Batchellor* and *Horton* cases. In neither of those cases were there any conditions in the statute which would uphold an issue of bonds for stock, or which, if *remitted,* would add any force to the transaction. If all the conditions of the statute were dispensed with, where would the authority rest to issue bonds for stock subscriptions, in the face of a provision that they should be issued only for cash and at par? And it will be seen that the defects in the *Mitchell* case occurred in the execution of *statutory authority.* The transaction in the present case was not within the scope of any authority, but in *violation of law.*

The case of *Williams vs. The Town of Duanesburgh* was decided in May, 1876, by the Court of Appeals,—less than two years before the decision in the *Horton* case, and it is worthy of notice that all the Judges who concurred in the decision of the *Horton* case, concurred also in the decision of the *Williams* case. Rapallo, Judge, who wrote the opinion in the *Horton* case, gave an unqualified concurrence in the opinion prepared by Judge Andrews, in the former case.

The *Williams* cases involved the same statutes, and the same issue of bonds as the *Town of Duanesburgh vs. Jenkins.* Also a statute which was passed in 1859, but which was not the subject of discussion or decision in the former case This was in form a *mandatory* statute, but it was not sustained as such—effect being given to it in the opinion of Judge Andrews, *only as conferring authority for the subsequent voluntary action of the town.* Instead of the *People vs. Batchellor* being overruled or questioned by this decision, it is approvingly alluded to in all the opinions given in the case. The concurrence of Judge Folger in the opinion by Judge Andrews, is plac-

ed upon grounds stated by him as follows: "I conceive that the case of the Bank of Rome vs. the Village of Rome, (18 N. Y., 38) and the line of cases following it have established the law for this State that the legislature, before the late amendment to the Constitution, had power to authorize a municipality to issue its bonds in aid of a railroad corporation, and that thus a rule of property has been set up which we may not disturb. The case of *The People vs. Batchellor*, 53 *N. Y.* 128, in the judgment rendered did not conflict with those cases, as it declared only that the legislature had not power to *compel* a municipality to do such an act;—a distinct question which had not before been passed upon by this Court. The opinion of Judge Andrews shows that the present case is not affected by the *People vs. Batchellor*. It also shows that the *irregularities* in official action in the issuing of the bonds in this case have been remedied by legislative action, which within the rule laid down by prior decisions of this court was competent."

Judges Allen and Church concurred in the result in an opinion written by Judge Allen, in which the *People vs. Batchellor* is expressly re-affirmed as being *declaratory of the law*, and *Duanesburg vs. Jenkins* is accepted only *as res adjudicata* on grounds of *judicial decorum*.

This Court, as appears from the opinion, entertained an erroneous view respecting what was said by Judge Allen in regard to the Batchellor case.

We quote from Judge Allen's opinion on page 141, where, speaking of the *People vs. Batchellor*, he said: "I am constrained therefore to regard the last decision of this court as authority. It rests upon sound principles *and must be regarded as declaratory of the law.*" And further on in the opinion the learned Judge said: "We are at liberty to carry the decision in *People vs. Batchellor* to its clear logical results, &c." And on page 143 the learned Judge said: "But in respect to the issue of the bonds of the present defendant, of which

those in suit are a part, this court is concluded by *The Town of Duanesburg vs. Jenkins,* in which the Commission of Appeals, a court of concurrent jurisdiction and equal authority with this court has decided the precise question after a deliberate examination, and it would be indecorous, if we were disposed to do so, to review that decision. It must stand not only as the law of the case, *but conclusive as to all the bonds of the present defendant issued by the same authority, and under the same circumstances.*"

It will also be seen, by an examination, that the cases from this court cited in *Williams vs. Town of Duanesburg* involved the consideration of statutes of purely a *remedial* character, and that in none of them was this question of *compulsory legislation* discussed or decided, The defects which were held to be cured by legislation were such as occurred in the attempted *exercise of a power granted and vested in the corporate body and its officers.* And the cases were cited as authorities sustaining *remedial* legislation only. The language of Judge Andrews is: "The authorities as to the legislative power to validate by subsequent legislation acts done *in assumed execution of a statute authority* which has not been strictly followed are numerous and decisive."

It is a notable fact that in every case in New York since the *Batchellor case* in which this question of *compulsory* legislation has been presented, the court has plainly declared its intention to adhere to the principle held in that case. It has been repeatedly cited and adopted as controlling authority, and followed by the Supreme Court in the several *General Term* departments of the State. In 1873 *People ex rel vs. Dyoe,* 2 *N. Y., S. C.,* 151; *The People ex rel vs. Railroad Co.,* 4 *Hun.,* 382. In 1875 *Matter of Buffalo & Jamestown R. R. Co.,* 5 *Hun,* 487. In 1878 both *The People vs. Batchellor* and *Horton vs. Town of Thompson* were cited and followed *Hardenburgh vs. VanKeuren,* 16 *Hun,*

20. In 1881 both cases were again cited and followed *The People ex rel vs. Otis.*, 24 *Hun*, 519. In 1880 the case is again cited as declaratory of the law, by the Court of Appeals, *City of Rochester vs. The Town of Rush*, 80 *N. Y.*, 307. In January, 1882, both cases were again cited and followed by the General Term of the Supreme Court, 3d Department, *Potter vs. Town of Greenwich*, 26 *Hun*, 326.

And in no case has *The Town of Duanesburgh vs. Jenkins* been followed as authority upon the question of *compulsory* legislation.

It may also be regarded as an important fact in this connection, that in *Horton vs Town of Thompson* all the cases cited in the opinion given by this court, were brought to the attention of the Court of Appeals, and were the subject of examination and decision. (See cases cited in the argument of counsel in that case.)

We respectfully submit as a sufficient reason why the court in giving the opinion did not refer to, or distinguish, or overrule any of the cases, that none of them encroached upon the principle held in the case.

That the decision in the case of *The People vs. Batchellor* has been universally accepted and understood by the courts, by the Bar, and by the citizens of New York as declaratory of the fundamental law and policy of the State, is evinced by the action of the people in 1874, in amending the Constitution with the view of prohibiting municipal bonding in aid of railroads. Acting upon the law as declared by the Court of Appeals in that case, and upon the principle there announced, that such debts can be created only by the voluntary action of municipal bodies, the restriction created by the amendment is placed upon the municipalities and not upon the legislature. The amendment is in these words: "No county, city, town or village shall hereafter give any money or property, or loan its credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in

or bonds of any association or corporation. Nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town or village purposes."

Now, if it shall be established that power exists in the New York Legislature to legislate such debts into existence without the consent or voluntary action of the municipal bodies, the evil aimed at exists in a worse form than before. The power can no longer be exercised by the people, but is confined strictly to legislative action alone, upon which no restriction is placed by the amendment.

We therefore believe, with all respect to this Court, that we are correct in saying, that it has never been the established law of New York, that its legislature is vested with power to pass *compulsory* statutes of this character. And that when the present defendant purchased the coupons in suit, he did so with a full knowledge that under the law of the State of New York as declared by its highest tribunal they were absolutely void in the hands of the party from whom he purchased.

We have been unable to find any reported case in this court where this distinct question has been decided. While it has been uniformly held as a matter of general jurisprudence that it is a legitimate exercise of legislative power to *grant* such extraordinary power to municipalities and to provide the manner in which it may be exercised—it has not been decided that it is an act of legislation to *compel* its acceptance.

The fact that no case has been cited from this court holding a different doctrine from that decided in the *Batchellor* case is a satisfactory indication that there are none.

Judging also from the remarks of Justice Strong, speaking for this court as late as 1873, in *The Town of Queensbury vs. Culver*, 19 *Wall.*, 83, it seems to have been regarded at that time, that the question had not

been decided in this court. The *Batchellor* case is there approvingly alluded to, and the distinction between *enabling* and *mandatory* statutes clearly recognized.

With the foregoing suggestions we respectfully pray for a reversal of the judgment.

T. F. BUSH,
of Counsel for Plaintiff in Error.

16589

OFFICE SUPREME COURT U.S.
FILED
OCT 4 1882
JAMES H. McKENNEY, Clerk

Supreme Court of the United States.

THE TOWN OF THOMPSON,
PLAINTIFF IN ERROR,

Against

ORLANDO PERRINE.

OCTOBER TERM, 1882. NO. 76.

Brief of T. F. Bush for Plaintiff in Error.

JOHN WALLER, Printer, Monticello, N. Y.

Supreme Court of the United States.

THE TOWN OF THOMPSON,
PLAINTIFF IN ERROR,

Against

ORLANDO PERRINE.

NO. 76. OCTOBER TERM, 1882.

This is a writ of Error to the Circuit Court of the United States for the Southern District of New York.

The action is upon coupons from bonds alleged to have been issued by the plaintiff in error in aid of the *Monticello and Port Jervis Railroad.*

A verdict was directed against the town to which exception was taken. This exception presents the case for review on its merits. *Page* 126.

The bonds purport to have been issued under a *special statute*, by commissioners appointed pursuant to the statute, for that purpose. No power whatever was conferred upon the town as a *corporate body*. The statute is set out in the record at page 126.

The power is conferred by *section* 2 in these words: "It shall be lawful for said commissioners to borrow on the faith and credit of their respective towns and villages aforesaid, such sums of money, not exceeding thirty-three per cent. of the valuation of said town, to be ascertained by the assessment rolls thereof respectively for the year eighteen hundred and sixty-seven, for

a term not exceeding thirty-years at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor *under their hands and seals respectively.*"

The restriction upon the exercise of the power is contained in *section* 3, in the following terms: "The said commissioners authorized by this act may, in their discretion, dispose of such bonds or any part thereof to such persons or corporations and upon such terms as they shall deem most advantageous for their said towns, *but not for less than par*, and the *money* that shall be raised by a loan, or sale of such bonds, shall be invested in the stock of such company now organized or that may hereafter be organized, * * * and said *money* shall be applied and used in the construction of such road as aforesaid, its buildings and necessary appurtenances, and for no other purpose."

This section was construed by the Court of Appeals of New York as containing a *substantial prohibition* of an issue of bonds except for money, and at par.

The tax-payers in giving the consent of the town, were careful to limit the transaction to an issue of bonds for money. (Page 98.) It is a consent, that the commissioners "may borrow on the faith and credit of said town of Thompson the sum of $148,000, * * * and execute therefor under their hands and seals the bonds of said town."

The commissioners in direct violation of the statute, and of the consent given thereunder, issued one hundred and forty-eight promises to pay of the denomination of $1000 each, none of which were under their seals, and none of them were given for money borrowed, or sold for money, but they were all traded to the railroad company for an equal amount of its capital stock.

The Court of Appeals of New York in *Horton vs. The Town of Thompson*, 71 *N. Y.*, 513, construing the 3*d section* of the statute, and the consent, and the action of the commissioners taken thereunder said:

"The only authority given to the commissioners

by this consent was to proceed according to the provisions of the act of 1868, that is to borrow money by disposing of the bonds at not less than par, and to invest the money so raised in the stock of a railroad company. They were not authorized to issue bonds in exchange for the stock of any railroad company; such a proceeding was wholly unauthorized, and was in substance prohibited by the act referred to in the consent, and would defeat one of its most important objects."

The court also cites an unbroken line of decisions in that court to the same effect, extending back to a period long anterior to the time when these bonds were issued.

The railroad company having thus received the bonds, entered into a contract for the construction of the road, *nominally* for the sum of $718,750, but which by the terms of the contract was to be paid in town bonds and first mortgage bonds of the road, except the sum of $25,000 which was to be paid in cash. (Fol. 258.)

A notable feature of this transaction is the almost entire absence of money, where the Legislature had carefully provided that money only should be furnished.

This contract shows the necessary result of the violation of the statute. The company having received bonds instead of money was forced to trade the bonds for labor and materials upon a basis, which, for convenience, was called *par*.

It was said by Justice Selden (*obiter*) in *Gould vs. The Town of Sterling*, 23 *N. Y.*, 459, "If, however, what was done was the same in effect as if the money had been borrowed and paid over to the company, the difference in form would not be material."

The same idea was advanced by this court in *Scipio vs. Wright*, 101 *U. S.*, 665. In that case the railroad company sold the bonds to Howland, but it did not appear that he paid the full face of them to the

railroad company in *money*. This Court said: "So far as discharging the debt of the town for its stock subscription is concerned, and so far as relates to obtaining a full paid certificate, the transaction is, in legal effect, the same as if the money had been borrowed by the town directly and paid over to the company. And, if it had appeared affirmatively that Howland had paid the full face of the bonds and interest, without any discount, when he bought, every object which the statute could have had in view in enacting that it should be lawful for the town officers to borrow on the credit of the town a limited amount of money and pay it over to the railroad company, executing town bonds therefor, would have been accomplished. * * * It is quite conceivable that the purpose of such a direction, instead of allowing an exchange of the bonds for the stock taken, was that the railroad company might obtain an amount of money equal to the amount of the bonds. This was important to the company, to the town as a stockholder and to the public as interested in the projected railroad. If the bonds might be delivered directly to the company in payment of the stock, it might sell them at a discount. Thus it would fail to obtain the assistance in building its road which the Legislature contemplated it should have. Its stock would be *practically sold for less than par*, and it would not be worth as much to the town as it would be had all the money for which the bonds were given come into the company's treasury."

Thus it will be seen that in the judgment of both courts it is necessary in order to sustain a departure from the statute, that it should appear affirmatively that the railroad company received the face of the bonds in money.

If, as was said by this court, an exchange of the railroad stock for the bonds is a practical sale of the stock for less than par, it follows that it is *a practical sale of the bonds for less than par*, and that an ex-

change of the bonds by the railroad company for labor and materials is also a practical sale of them for less than par.

It may be safely asserted as a matter of common knowledge, that a contract for labor and materials upon a basis that payment is to be made in municipal bonds instead of money, cannot be as advantageously made, and be the same in effect as it could have been made upon a cash basis; especially where as in this case the bonds were at a discount in the market. (Page 125.) To adopt the language of Justice Bronson in State of Illinois vs. Dellafield, 2 Hill, 172: "It is a question about *par value*, and if that does not mean in this case a dollar in money for every dollar of security, the wit of man cannot tell us what it does mean."

The statute is referred to in the bonds, and the fact that they were issued in consideration of railroad stock is also recited in them. Hence ignorance and innocence cannot be asserted as an element in the plaintiff's case. (Fol. 239.)

The reference to the statute, and the recitals, are as follows:

"This bond is a valid security, being issued by virtue of an act entitled an act, &c. * * * Know all men by these presents that the town of Thompson, in the County of Sullivan and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the act above entitled and referred to, *and for value received in the stock of the Monticello and Port Jervis Railway Company,* promises to pay the bearer the sum of one thousand dollars," &c.

It has been urged in the progress of this litigation that the recitals in the bonds, construed as a whole, convey the idea that the bonds were issued for money and at par value, pursuant to the statute, and that the town has value received for the money it promises to pay in the stock of the railway company.

There are many serious obstacles in the way of such a construction.

FIRST.

It is clear that the makers of the bonds did not intend to so state the facts. They did not as a matter of fact receive a dollar in money, but did issue them for the stock of the company precisely as recited, and they evidently intended to make a truthful recital of the facts. This construction cannot therefore prevail without converting a *truthful recital into a false one.*

SECOND.

No purchaser of the bonds would be justified in giving the recital the construction contended for, neither would it be likely to enter his mind in the absence of a suggestion *aliunde.*

By the plain intendment of the statute the commissioners were not to subscribe for stock until they should have received the money for the bonds. They must first have the money in hand, so as to be certain of the amount they have to invest. They had no power to contract a debt for stock subscriptions. The language of the statute is: "The commissioners respectively in the corporate name of each of their said towns or villages aforesaid may subscribe for and purchase stock of such company *to the amount they have severally borrowed as aforesaid.*" The bonds speak to the purchaser as of the date of their inception. It was therefore impossible for the commissioners to have complied with the statute, *i. e.*, sold the bonds for money and still have received the stock of the company at the time of issuing and parting with the bonds. Therefore, the construction contended for would render the recital false upon its face.

THIRD.

The first clause of the sentence recites the source of the power to issue the bonds; the second clause recites what they are issued for. The expression of the fact that they are issued for value received in the stock of

the company, excludes the idea that they were issued for anything else. A judicial interpretation of these recitals lies in the maxim *expressio unius est exclusio alterius.*

FOURTH.

The Court of Appeals of New York in the case cited gave an authoritative construction of these instruments in the following terms: "The bonds state upon their face that they are issued under the act of 1868, referring to it, and are executed by the commissioners appointed under said act. They do not purport to be issued by any town officer. They are payable to bearer and recite that they are given for value received in the stock of the Monticello and Port Jervis Railway Company. It thus appears upon the face of the bonds themselves that they were issued, not for money, but for stock in violation of the act and of the consent given thereunder. No one taking them could allege ignorance of this important fact."

The bonds bear date in May, 1869, and were delivered to the company about that date. On the 28th day of April, 1871, the Legislature of New York passed an act purporting to validate them, and to impose them as a debt upon the town.

The Court of Appeals of New York in January, 1878, and before the commencement of these actions, adjudged the act unconstitutional and void. *Horton vs. Town of Thompson, supra.* This decision *reaffirmed* the principle declared in that court in 1873, *(People vs. Batchellor, 53 N. Y.,128)* that the Legislature of New York cannot by the sheer force of legislation make a debt for the municipal corporations of the State. At the time this decision was rendered all the coupons involved in this action, and the five bonds described in the complaint, were held and owned by the plaintiff's vendor, a citizen and resident of the State of New York, and were purchased by the plaintiff in May and June, 1878, in the city of New York. He purchased at an enormous discount, paying 50 per

cent. for the bonds and 30 per cent. for the coupons. (Fols. 263 to 267.)

There is no evidence that any of the bonds or coupons purchased by the plaintiff below in May and June, 1878, were sold or changed hands from the time of the passage of the act of April 28th, 1871, until after it was directly adjudged void and of no effect by the highest court of the State.

On the 21st day of November, 1872, in an equity action, this entire issue of bonds was adjudged void, and the stock taken by the commissioners cancelled by a decree of the Supreme Court of New York. (See decree, page 122.)

The former action between these parties was tried in May, 1878, before the plaintiff below made the purchase of that year. Upon that trial the decision in the *Horton* case was brought to his notice; also the decree in the equity case, it having been set out at length in the answer, and as a defense. *See judgment roll, fol.* 223.

It will be observed that in this case, although the railroad has been constructed and put in operation, the town has not received what the statute contemplated it should have as a consideration for its bonds.

It was the legislative intent that the town aiding in the construction of the road should, by virtue of the stock it should receive, substantially own and control the road. Through the violation of law complained of, this scheme was entirely defeated. By the judgment in the equity case the town was forced to surrender the stock, and the road—whatever it is—is owned and managed exclusively by a private company. *Section* 3 *of the statute, page* 13 *of the record.*

It will also be observed that the inhabitants of the town did not remain silent until the road was built and the bonds had gone into the market, but that they have constantly protested against the transaction ever since the bonds were thus fraudulently issued by the commissioners.

POINTS.

I

The established law of this Court prohibits a recovery upon the coupons claimed for in this action.

When the bonds from which these coupons were taken were issued and put upon the market *by the special agents created by the statute*, they were void and of no effect and there could be no *bona fide* holding of them under the laws of New York, as it was understood by all the departments of the State, and as it was uniformly administered in its courts of justice.

Starrin vs. Town of Genoa, 23 *N. Y.*, 489.
Gould vs. Town of Sterling, 23 *N. Y.*, 456.
Horton vs. Town of Thompson, 71 *N. Y.*, 513.
Scipio vs. Wright, 101 *U. S.*, 663.
Town of Thompson vs. Perrine, 103 *U. S.*, 806.

There is no evidence that any of these fraudulent instruments were transferred or changed hands at any time while the act of 1871 was an apparent law of the State. Only one transaction respecting any of this issue of bonds occurred during that period, and that was the purchase by Messrs. Guilick & Van Cleek from the Bond Street Savings Bank in the City of New York, in 1875, of eighteen bonds numbered from 122 to 130 and 138 to 146. These were all included in the sale of the twenty-one bonds to this plaintiff in 1875. (Folio 264)

The coupons from that parcel of bonds are all included in the action No. 75.

It is therefore respectfully urged that the fact that a validating act was passed in 1871 can have no effect whatever upon the rights of the parties in this action, as it was adjudged unconstitutional and void by the highest court of the State in January, 1878, and no transaction whatever occurred upon the faith of it.

Horton vs. The Town of Thompson, 71 *N. Y. R.*, 513.

The argument in No 75 covers this case and it is regarded as unnecessary to repeat it here.

It is respectfully submitted that the judgment should be reversed.

T. F. BUSH,
of Counsel for Plaintiff in Error.

OFFICE SUPREME COURT U.S.
FILED
OCT 12 1882
A. H. McKENNEY, CLK

EVENING POST JOB PRINTING OFFICE, 208 B'way, N. Y.

1589

United States Supreme Court.

THE TOWN OF THOMPSON,
Plaintiff in Error,

vs.

ORLANDO PERRINE,
Defendant in Error.

October Term, 1882.—
Nos. 75 *and* 76.

Brief of Mr. Bangs for Plaintiff in Error.

Error to the Circuit Court of the United States for the Southern District of New York.

In 13th Otto, 806, is reported the case of Thompson *vs.* Perrine.

The present cases are between the same parties, Perrine having been and being the plaintiff below, and having there recovered judgment.

These suits, also, are brought upon securities of the same description as those upon which the case reported in 13th Otto was brought; that is, upon coupons detached from bonds issued by commissioners appointed under a law of New York passed May 4, 1868, and an amendatory law passed April 1, 1869.

The difference between these cases and the one reported in 13 Otto is *in the time of Perrine's acquiring title to the coupons on which the suits were respectively brought.*

That difference of time is important, because this court held, in 13th Otto, 806, that under the above mentioned laws of May 4, 1868, and April 1, 1869, if those were the only laws affecting the question, no recovery could be had; that the right to recover was derived from an act passed April 28, 1871, which act was, by the New York Court of Appeals, in the case of Horton *vs.* Thompson, decided January 15, 1878, and reported in 71 N. Y., 514, declared to be unconstitutional, but that between the passage of the Act of 1871, and the decision in Horton *v.* Thompson, the plaintiff, Perrine, had become the purchaser of the coupons in good faith, and had, on the faith of the Statute of 1871, acquired a perfect right of action, of which he could not be divested by the subsequent decision of the Court of Appeals. His right of recovery was therefore put, partially, upon *the time of his acquisition of title.* That time was, in the case in 13th Otto, the year 1875, while in the present cases the coupons sued upon in No. 76, and $9,240 of those sued upon in No. 75 were bought in May, 1878, at thirty per cent. of their face (fols. 263 to 269). They were then all overdue, some of them having matured in March, 1872 (fols. 16 to 18).

So far, then, as Perrine's former recovery grew out of an equity arising from the time and circumstances of his acquiring title, the case in 13th Otto is broadly and plainly differentiated from the cases now at bar.

It may be said, however, that the case of Thompson *vs.* Perrine in 13 Otto, 806, would have been decided as it was, irrespective of the equity arising from the time and circumstances of the purchase by Perrine of the coupons then in suit, and that, without that equity, this court would have sustained his recovery on the ground that the Act of 1871 was valid, and that the decision of the Court of Appeals to the contrary was wrong. We do not so understand the court. Its language at page 817 indicates its meaning to be that whether the Act of 1871 was valid or not, the "*conclusive reason*" why Perrine should recover was found in the fact that he purchased after the passage of that act, and on

the credit of its validity, before it was declared to be unconstitutional.

The case which is reported in 13 Otto, 806, was decided May 2, 1881, close to the end of the term. There was no time to file a petition for a rehearing during that term, but such a petition was filed at the beginning of the term of October, 1881. That petition is now on the files of the court.

This court having held, in 13th Otto, 806, that no recovery could be had upon the coupons but for the act of April, 1871, the object of this argument will be to establish only the following propositions:

1. The time of Perrine's purchase of the coupons in suit No. 76 and most of those in suit No. 75 differentiates these cases from the one in 13 Otto so materially as to make the decision in that case inapplicable here.

2. This court should now adopt the decision of the Court of Appeals in Horton *vs.* Thompson and apply it to these causes.

3. The Act of 1871 being unconstitutional, and the plaintiff, Perrine, having made his purchases with knowledge of that fact, he was not entitled to recover, and the judgments in his favor should be reversed.

I.—*The time of the purchase by Perrine of such of the coupons now in suit as were bought in or after May,* 1878, *makes a material difference between his rights as the holder of such coupons and the rights which he had as the holder of the coupons on which he recovered in* 13 *Otto,* 806.

1. The emphasis with which this court, in 13 Otto, 806, dwelt on the fact that Perrine's purchase of the coupons then under consideration was made in 1875, before the decision in Horton *vs.* Thompson, shows that that fact was not regarded as trifling or insignificant, and involves the idea that the reverse of the fact would have been regarded as important, to the extent, perhaps, of being decisive.

2. The coupons in suit, when they were purchased by Perrine, so far as they were bought in 1878, were all past due, and were therefore discredited by the very fact that they were outstanding unpaid. They were further discredited by the fact that the highest court of the State had pronounced them incapable of enforcement as contracts. When Perrine bought, he knew that he would have to undertake, not merely to overcome the unwillingness of the town to pay, but the refusal of the Court of Appeals to enforce payment—that, in short, he would have to undertake either a reversal or an evasion of the law of the State in which the contract purported to be made. Thus volunteering to buy a litigation, and to overthrow or evade the law of the State, he presents no claim to favorable consideration from this court. He bought a purely legal right; he is entitled to nothing but strict legal right; he can estop neither the town of Thompson nor the State of New York, nor can he screen the true limit of his strictly legal right from the scrutiny of this court by the intervention of any equity founded on his own faith and confidence in the validity of the security, or on any deceit, acquiescence or laches on the part of the town.

3. The present attitude of the question of the town's liability is a singular and unseemly one. In the State of New York, where the town exists, the contract was made and was to be performed. It cannot be enforced in favor of a citizen of that State, but it

may be enforced there in a Federal tribunal in favor of a citizen of another State. Thus, within the territorial limits of the State of New York a citizen of New Jersey has greater rights against the town of Thompson, by contract, than a citizen of New York has under or upon the same contract. Yet the contract means the same thing, through all diversities of ownership, and there cannot be two rules for construing or enforcing it. There can be but one true law applicable to it, and every enunciation in the garb of law, variant from that true rule, must be a false enunciation (4 *Otto*, 267, *Town of South Ottawa* v. *Perkins*).

4. Before this court had made any utterance of its views, the Court of Appea'ls had notified Perrine what the law of New York was; and, *quoad* that law and that announcement of it, his purchase was lawless and defiant of authority. What he bought was, in the State of New York, *nudum pactum* when he bought it. It could not get vitality from his citizenship in New Jersey, nor from a subsequent opinion in this court upon another and distinct contract; and this court is not bound, in his favor, to widen the difference between it and the Court of Appeals by applying to his present claim a ruling upon a claim which had its origin under different circumstances.

II.—*This court should now adopt the judgment of the Court of Appeals in Horton* vs. *Thompson, and apply it to these Causes.*

1. The effect of the decision in Horton *vs.* Thompson, was that in the State of New York, the Act of 1871,

if it ever had been law, ceased to be so, as effectually as if it had been repealed.

15 *How.*, 432, *Ohio Life Ins. Co.* vs. *De Bolt.*
9 *Wall.*, 485, *City* vs. *Lamson.*
16 *Wall.*, 690, *Olcott* vs. *Supervisors.*
99 *U. S.*, 687, *Douglass* vs. *County of Pike.*
Taylor vs. *Ypsilanti, No.* 153, *Oct. Term*, 1881.

2. The decision in Horton *vs.* Thompson is the only decision ever made by the Court of Appeals upon the constitutionality of the Act of April, 1871. There may have been, and indeed were, decisions of that court upon the constitutionality of other acts of the Legislature, but how far such other acts resembled or differed from the Act of 1871, was for the Court of Appeals to decide. It saw differences which it was at liberty to see; and in putting the construction which it did put upon the Act of 1871, it was not bound or controlled by any preceding construction of that act. It adjudged, in harmony with the views of this court upon similar subjects, that the bonds were illegally issued, and that therefore their original issue imposed no debt or duty upon the town. It also adjudged the Act of April, 1871, to be invalid for want of authority in the Legislature to create a town debt.

In this respect, it is submitted that that court did not disregard the force of any of its previous decisions, and that it had a right to construe and interpret its own decisions.

In *Bank of Rome* vs. *Village of Rome*, 18 *N. Y.*, 41, the question arose upon an act passed in 1853. The chief judge stated the question to be "whether any "particular provision of the Constitution forbids the "conferring upon a municipal corporation power to "take stock in a railroad company and thereby to "incur a debt." But, in the case of Horton *vs.* Thompson, the language (p. 525) of the court is this: "It is "claimed on the part of the plaintiff that the act" (of

1871 " made the bonds a debt against the town. I " think this was beyond the power of the Legislature, " and was precisely what it was decided in the case of " the People *vs.* Batchellor could not be done." * * * " The Legislature had no power to validate " that bond unless they had power to authorize or " direct the commissioners originally to contract the " debt without any consent or action on the part of " the town. This, as we decided in the Batchellor " case, they had no power to do."

Thus, in the view of the Court of Appeals, the question presented in Horton *vs.* Thompson differed from that presented in Bank of Rome *vs.* Village of Rome, and the cases arose under different statutes.

The case of *The People* vs. *Mitchell*, 35 *N. Y.*, 552, arose under laws passed in 1856, 1857 and 1859. These laws did not purport to create town debts, nor to authorize any one to create town debts, without the consent of the town. On the contrary, they provided for obtaining such consent and preserving the evidence of it. But, inasmuch as the evidence was defective, judged by the standard of the original law, the Legislature assumed to say that, nevertheless, the affidavits should constitute evidence; and so the real question was, whether it was competent for the Legislature to enact a rule of evidence. That was quite a different question from the one which arose in Horton *vs.* Thompson.

The case of *Duanesburgh* vs. *Jenkins*, 57 *N. Y.*, 177, arose under the same statutes as the last preceding case. The Legislature had, in the original acts, provided for the evidence of the consent of the taxpayers to the bonding of the town. The evidence furnished did not come up to the statutory requirement. The Legislature then enacted that the evidence as it stood should be sufficient. The simple question was as to the power of the Legislature to enact a rule of evidence. That power is settled in the State of New York beyond dispute. Everything

54 N. Y. 262, Howard v. Moot.

in the opinion not relating to that question is *obiter dictum.*

The case of *Williams* vs. *Duanesburgh*, 66 *N. Y.*, 129, arose under the same legislation, and was decided in the same way. The legislation did not assume to compel a town to incur or assume a debt, but only to regulate the sufficiency of evidence, or it indicated the sufficiency, to the mind of the Legislature, of the existing evidence, that the town had consented.

On the other hand, the case of *People* vs. *Batchellor*, 53 *N. Y.*, 128, was regarded by the court as presenting distinctly the question whether a town could be compelled, without its consent, to incur debt for the purpose of building a railroad, and that question was answered in the negative. The case of Williams *vs.* Duanesburgh was not regarded as presenting that question (66 N. Y., 138).

The case of Horton *vs.* Thompson is therefore directly in line with the only other case decided in the State of New York which, in the judgment of the Court of Appeals, was analogous to it.

III.—*If the foregoing propositions are correct, the third necessarily follows, viz.: that the judgments under review should be reversed.*

F. N. BANGS,
For Pl'ff in Error.

OFFICE SUPREME COURT U.S.
FILED
JAN 9 1889
JAMES H. McKENNEY, Clerk.

1658 89

Supreme Court of the United States.

ORLANDO PERRINE,
DEFENDANT IN ERROR,

ads.

THE TOWN OF THOMPSON,
PLAINTIFF IN ERROR.

Nos. 75 & 76.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

These causes were tried together below and upon the same evidence, upon the questions of fact, and are brought up upon the same exceptions, in matters of law.

The causes of action in the two cases differ only in the sets of coupons upon the same issue of bonds of the town of Thompson, which the plaintiff below sued on.

In a previous action by the same plaintiff against the same defendant, and in the same court, upon coupons of the same issue of bonds, the plaintiff had a recovery, which was brought here upon writ of error, and the judgment was in all things affirmed by the unanimous decision of this court.

The case is reported as Thompson *v.* Perrine, 103 U. S., 806.

The present cases were upon the docket of this court at the time the former case was argued and decided. Apparently the three cases were then, and are now, indistin-

guishable in the legal elements of the controversy, and in the facts upon which these legal elements are presented. Both parties seem to have treated the present cases as so necessarily subject to the same disposition as the case first reached for argument, that the present cases were not advanced and presented upon the former argument.

As the judgment in the former case is not only a conclusive authority upon the main controversy between these parties, but is *res adjudicata* upon all that was *or that might have been* litigated in the former suit, it is obvious that the present litigation, if it has anything to support it, must be wholly confined to some supposed legal discrimination between the title of the plaintiff below to the coupons now sued on, and his title, as shown in the former suit, to the coupons on which he had his recovery.

CAUSES OF ACTION IN CASE NO. 75.

First. Certain coupons attached to certain twenty-one bonds owned by the plaintiff, being the same bonds coupons from which constituted the *whole* cause of action in the former suit, in which the judgment was recovered and was affirmed by this court as reported in 103 U. S., p. 806.

So far as this cause of action is concerned, the former judgment is an absolute bar to the present suit; the title of the plaintiff to the bonds as giving the right of recovery on those coupons covering all the coupons of those bonds.

Second. Certain coupons attached to five other bonds numbered 72 to 76, inclusive, owned by plaintiff and bought by him in May, 1878, from Gulick & Van Cleek, who bought them from a bank at Port Jervis in September, 1869.

Rec., fols. 263, 266.

Third. Certain coupons (upon 89 different bonds) falling due March, 1872, to March, 1875, inclusive, which coupons

were purchased by plaintiff from Van Cleek in May, 1878. These bonds, to the number of 53, were in the hands of Vermilyea & Co., bankers in New York, in November and December, 1869, and were all sold in the usual course of trade. The record shows no previous history, by their numbers, of the rest of these 89 bonds.

Rec., fols. 262, 266.

In respect of the coupons included in the second and third items, the judgment in the former suit is *res judicata* between these parties in respect to everything that was litigated or might have been litigated therein. This leaves only the question whether the date or manner of the plaintiff's acquisition of title to these coupons distinguishes his right of recovery thereon from his right as established in the former suit, so as to defeat it.

CAUSES OF ACTION IN CASE NO. 76.

Certain coupons attached to twenty-two different bonds, and falling due from March 1, 1872, to March 1, 1878, inclusive. Of these bonds eleven in number were of the parcel in the hands of Vermilyea & Co., bankers, in November and December, 1869, for sale, and sold by them in their regular course of business. Of the residue there is no previous history, by their numbers, in the record. The coupons sued on in this case were bought by the plaintiff in July, 1878, of Van Cleek.

Rec., fols. 262, 269.

The present contention of the plaintiff in error is, that in respect of the coupons not attached to the twenty-one bonds covered by the former judgments, the decision of this court, as reported in 103 U. S., is not *res adjudicata*, nor a conclusive authority, and for this single reason:

The plaintiff acquired the bonds involved in the former suit in 1875, and prior to the decision in the Court of Ap-

peals in the case of Horton *v.* Thompson, which declared, as the judgment of that court, that the ratifying act of 1871 was unconstitutional.

This decision of the Court of Appeals was in January, 1878. The former action of the plaintiff was tried in the U. S. Circuit Court in May, 1878, and the decision of the Court of Appeals was brought to the notice of the court and the parties at that trial. Notwithstanding this decision of the Court of Appeals, the Circuit Court gave judgment for the plaintiff. The plaintiff, thereupon, confiding in the judgment of the Circuit Court, purchased, partly in May and partly in July, 1878, the additional coupons which are included in these two suits.

Now, this court, in its decision of the former case, held (1) that by the jurisprudence of this court the ratifying act of New York was constitutional, and that the point turned upon general principles of law, and not of the interpretation of a State statute by a State court; and (2) that by a long course of decisions of the highest court of the State of New York such a ratifying act was constitutional, that the case of Horton *v.* Thompson was not reconcilable with this long series of decisions, and this court could not surrender its own conclusion to the authority of this late doctrine of a single case; and (3) that, *independent of these considerations*, this late decision, changing the rule which had obtained when the plaintiff had acquired his bonds, could not affect a title acquired by the plaintiff before this innovating decision was given.

Upon this threefold ground of this court's decision, each being independent of the other, and each sufficient by itself, the plaintiff in error, assuming one, the last, to be applicable only to titles acquired under the ratifying act *before* the decision of the Court of Appeals, seeks to renew the discussion in respect to the plaintiff's title, acquired *since* that decision, though all the coupons are covered by

the two principal and independent grounds of that decision.

This form of defense is manifestly an *after-thought*, suggested, as a possible defeat of the recovery in these actions, by a misconception of the true bearing of the observations of the court upon the point now sought to be brought into prominence.

The single fact that the purchase of this plaintiff of any particular bonds or coupons was *after* the date of the decision of the Court of Appeals, is, of course, immaterial if the bonds or coupons were held by the plaintiff's immediate or any precedent vendor by a title acquired *before* the date of the decision of the Court of Appeals.

The pleadings, proofs, and exceptions at the trial furnish no basis for any impeachment of the title to these coupons, as held by their owners prior to the decision of the Court of Appeals.

1. The complaint avers, respecting the whole issue of the town's bonds—

> "That the said bonds and coupons, upon being issued, passed into the possession of and became the property of various persons and corporations in good faith and for a valuable consideration."
>
> Rec. No. 75, fol. 13.

The answer, in regard to this matter of previous title, was "that the same were held and owned by persons residing in the State of New York at the time they were transferred to the plaintiff, and that the plaintiff purchased and took them, and each and every of them, by assignment, from said persons resident in the State of New York as aforesaid, *who could not maintain an action thereon in this court*, and that the said bonds and coupons were not negotiated to the plaintiff, under or by the law-merchant, but that the plaintiff, *at the time of the purchase and assignment thereof*, had a knowledge of the said defects and of the

illegal issue and exchange of the said bonds hereinafter set forth. Whereupon the defendant alleges that under the provisions of an act of the Congress of the United States, approved March 3, 1875, this court has no jurisdiction of this action."

Rec. No. 75, fol. 22.

Thus, the allegation that prior to the decision of the Court of Appeals all the bonds and coupons were in the hands of bona-fide holders for value, is affirmed by the answer, and the only question of fact raised is of the plaintiff's title not being substantial, but colorable, and so not enabling him to sue in the Circuit Court.

Id. fol. 23.

Upon the proofs it appears that the allegation that all the bonds and coupons anterior to the decision of the Court of Appeals "had become the property of various persons and corporations in good faith and for a valuable consideration," was fully sustained.

Cady, plaintiff's witness, fol. 237 to 245.

Marvin, defendant's witness, fol. 286 to 291.

Calahan, Mead, Van Cleek, plaintiff's witnesses, fol. 262–3.

Points.

First Point. Before the plaintiff in error can avoid the effect of the decision in Thompson *v.* Perrine, 103 U. S., 806, as both *res adjudicata* and a conclusive authority in support of the judgment below, he must reject from the reason and the judgment given by this court—

(1.) Its determination that, upon the jurisprudence of this court, the act of 1871, ratifying the exchange of town bonds for the railroad stock at par, made such exchange in

all things, thenceforward, equivalent to the sale of the bonds and payment of the proceeds to the railroad company, if that had ever been necessary.

Thompson *v.* Perrine, 103 U. S., 811.

(2.) Its determination that the tenor of the decisions of the highest court of New York, at and long before the passage of the act of 1871, sustained the competency of that act, and the recent case of Horton *v.* Thompson, decided in the Court of Appeals in 1878, could not impugn the previously established jurisprudence of the State of New York, and could not be yielded to by this court.

Thompson *v.* Perrine, 103 U. S., p. 817.

SECOND POINT. Supposing, for argument's sake, that the plaintiff in error shall satisfy this court that its previous determination between these parties, by which the bonds were held valid, rests wholly upon the negotiation of them for value in the space of time between their issue and the decision of Horton *v.* Thompson in 1878 in the Court of Appeals, subverting the previous doctrines of that court, the plaintiff in error will have made no progress towards invalidating these bonds and coupons in the hands of the plaintiff, though purchased by *him* since the decision in the Court of Appeals.

The doctrine of this court, on this third head of its reasoning, is laid down on pages 817–18. Its result is thus distinctly and peremptorily stated by the court:

"It results that from that moment" (the passage of the act of 1871) "the bonds, *by whomsoever held*, whether by the railroad company or by others, *became binding obligations of the town*, as much so as if they had originally been sold and their proceeds invested in the stock of the railroad company, as required by the acts of 1868 and 1869."

Ut supra, p. 818.

The court then finds that Perrine's title to the bonds in suit was thus operated on by the act of 1871, and holds that the decision of the Court of Appeals in 1878 would not affect them:

"His rights, therefore, should not be affected by a decision rendered after they accrued, which decision is in conflict with the law, as declared not only by this court in numerous cases, but by the highest court of the State, at or before the time he purchased the bonds."

Now, the "rights" that Perrine had in *those* bonds was not merely to *sue* on them, but to sell them, and sell them as well *after* the novel decision, by which "his rights should not be affected," as before. But how would that "right" be secure to him if he could not communicate it to a subsequent purchaser—that is, if no one could purchase his bonds?

What, under the decision of this court, is true of the bonds *Perrine* held *before* the decision in the Court of Appeals, is true of bonds held by other persons in the same predicament *before* the decision in the Court of Appeals. These rights these holders communicated to Perrine when he purchased *after* that decision, and the former decision of this court fully covers Perrine's bonds and coupons now in suit.

This is but the familiar doctrine that the right of a *bona fide* holder for value enures to his vendee, though the latter be neither for value nor without notice.

THIRD POINT. Cases are cited by the plaintiff in error in which this court has spoken of a *change* in decisions by a State court as being operative *deindè*, as if a change by statute itself. This is certainly putting the operation of a change of judicial doctrine at its fullest effect.

But it is manifest that a repeal in 1878 of the act of 1871 would not have annulled the rights acquired in the

interval. Those rights, not b ing annulled, could of course be communicated, though new ones might not be created afterwards.

FOURTH POINT. It happens that the records in these cases present complete proof on the transaction by which the railroad company got full value, as at par, for the town bonds in its negotiation of them. This proof, from accident or inattention, was found wanting in the former record.

Now, the doctrine, both of this court and of the Court of Appeals of New York, is, that such a circuit of negotiation, by which the railroad company receives the cash equivalent at par, satisfies the requirement of the statute in that regard.

Scipio *v.* Wright, 101 U. S., 665.
Gould *v.* Sterling, 23 N. Y., 459.

For proofs, see evidence as follows:

Contract with R. R. Co. to build road, Rec., fol. 245 to 260.
Cady, witness for pl'ff, Rec., fol. 241–5.
Marvin, witness for def't, Rec., fol. 286–91.

FIFTH POINT. So far as this court may need to review the principal controversy, as bearing upon what is supposed by the plaintiff in error to be open for argument, the defendant in error is satisfied to refer to the judgment in 103 U. S. in the former case.

But a copy of the "brief" presented for the defendant in error in the former case is appended.

WM. M. EVARTS,
Of Counsel for Def't in Error.

Supreme Court of the United States.

ORLANDO PERRINE,
DEFENDANT IN ERROR,
ads.
THE TOWN OF THOMPSON,
PLAINTIFF IN ERROR.

October Term, 1880.

Reported 103 U. S., p. 806.

BRIEF FOR DEFENDANT IN ERROR.

FACTS.

The brief for the plaintiff in error presents the facts and the statutes involved so fully as to need but few additional citations from the record on the part of the defendant in error.

First. It is to be noted that the original enabling statute gives to the Commissioners very liberal discretion as to the disposition of the town bonds placed in their hands to furnish aid to the projected railroad.

"The said Commissioners authorized by this act may, in their discretion, dispose of such bonds, or any part thereof, to such persons or corporations, and upon such terms as they shall deem most advantageous for their said town, but not for less than par, and the money that shall be raised by any *loan* or sale of said bonds shall be invested in the stock of such company now organized, or that may hereafter be organized," &c.

Section 3 of Act, Record, p. 74.

"The Commissioners respectively, in the corporate name of each of their said towns or villages aforesaid, may subscribe for and purchase stock of such company to the amount they may have severally borrowed as aforesaid, and by virtue of their said subscription *or* purchase of stock, and upon receiving certificates *or* the transfer of certificates for the amount of said stock so subscribed for and purchased by them, the said towns or villages" shall acquire rights and be liable as other stockholders.

Same section, Record, p. 75.

Section 9 of the act provides for a joint and several bond by the Commissioners and two sureties to the supervisor of the town, *to the amount of bonds issued by said town*, conditioned for the faithful discharge of their duties, &c. This bond is to be lodged with the supervisor for collection, for the use of the town, in case of breach of condition.

Record, p. 76.

Section 10 provides for removal of any Commissioner on application of twelve freeholders of town.

Record, p. 77.

These provisions do not limit the sale of bonds to *cash*, nor do they prohibit raising means by loan on a pledge of the bonds.

It is not pretended that the holder of these bonds is affected with any notice of the actual exchange by the Commissioners of these bonds for stock subscribed for. The range of discretion in the Commissioners is important as showing that the whole scheme of the statute, financially, was that the town should receive, on subscription *or* purchase of the stock in which they were *compelled* to invest, a stock to which the town bonds had furnished cash means equal to their par value towards building the road.

This result secured the two objects of the law: (1) that

the town should be held for no amount beyond the stock it took at par, and (2) that the stock should get from the bonds, as means for the enterprise, the faculty of cash payment, in construction, to the amount of the bonds.

Under this statute, then, the recital of the bond with which their purchasers are affected is as follows:

"This bond is a valid security, being issued by virtue of an act entitled, &c.

"Know all men by these presents, that the town of Thompson, &c., by the undersigned Commissioners thereof, by virtue and in pursuance of the act above entitled and referred to, *and for value received in the stock in the Monticello and Port Jervis Railway Company*, promises to pay the bearer the sum of one thousand dollars."

This statement of "value received" was wholly unnecessary, unless to make it apparent that the town had, or would have, as a resource for meeting its bond, the statutory equivalent of its face—that is, the railway stock which it was to buy, and which was held, by the statute, to supply to the town the means by dividends to meet the interest on the town bonds, and by the sale or value of the stock to cancel, purchase, or redeem the bonds.

Act, sections 4, 5, 6; Record, pp. 75, 76.

The *notice*, then, that this bond carried *on its face*, was that the issue was by authority of and conformably to the statute, and that it procured for the town the "value received" which the statute required, to wit, the stock of the railway.

The assumption that *from the face of the bond* the purchaser thereof had notice that the town had become or would become possessor of the railway stock contrary to the act, seems careless. The Commissioners never proposed such a construction, the takers never conceived such a construction, and a purchaser for value must be affected with notice of some *actual transaction at variance with the law* before he can lose his strong defense against unknown infirmities.

Certainly this corroboration of the security he buys, that his obligor not only has, but must keep, hold, and apply to its payment the statutory "value received" to obtain which its issue was authorized by law, cannot disparage the security in the purchaser's hands.

Of course the bonds were framed with this recital long before they were issued or their disposition made. The recital, therefore, is not of *an act of negotiation*, but of *a trait of the security.*

Second. The facts under which the bonds inured to their full par value in money to the means of building the railroad, according to the design of the enabling act upon its strictest construction, are apparent and conclusive to this effect on the record.

These bonds are dated May 1, 1869, and the Commissioners soon after subscribed for the railway stock, and delivered the bonds to the company.

Record, fols. 188, 189, 261, 262.

Prior to these dates, and in March 11, 1869, the railway company had made a contract with responsible contractors to build the road complete for $718,750.

This amount was paid to the contractors in cash, and in town bonds and in first-mortgage bonds of the company as cash, both securities being taken at their par value.

All the town bonds were thus paid by the railway company to the contractors *as cash*, and were so received by them.

There is no evidence that the contractors did not realize from the disposition of the bonds, and apply to the construction of the road, their full par value.

Record, fols. 241–244, 263.

Third. The integrity of every step in the negotiation of the bonds, whereby they came to be the property of the plaintiff below for value, without notice or suspicion on the part of himself or his vendors of any infirmity of the bonds, either in respect of the warrant for their issue or the mode of putting them on the market, is indisputable upon the record.

The plaintiff below bought the bonds at the usual public sales-room for stocks, bonds, and other securities in the city of New York, at an auction sale, July 21, 1875, paying cash for them.

Record, fol. 185.

His vendors were Gulick & Van Kleeck, well-known and long-established merchants in the city of New York. They purchased eight bonds in September, 1869, of the National Bank of Port Jervis at ninety cents on the dollar for cash. The purchase was made without any notice of the "Benedict suit," or of any irregularity in the bonds, or of any defense to them.

Record, fol. 184.

They bought eighteen bonds from the Bond-street Savings Bank of New York, February 19, 1875, at seventy cents on the dollar.

Record, fols. 182, 184.

The Bond-street Savings Bank (originally called Atlantic) bought $50,000 of these bonds from the well-known banking house of Vermilyea & Co., at 82½ per cent. cash. They were without notice of any suit, litigation, defect, or irregularity.

Record, fols. 179, 181.

The coupons on these bonds were paid at the Hanover Bank, in New York, for March and September, 1870 and

1871; those of the last year not till 1874. These coupons were paid by taxation of the town providing the money.

The stock of the railway company remained in the hands of the Commissioners who received it till May, 1870, and was then handed over to their successors.

The railroad was completed in January, 1871, and has been in operation ever since.

Record, fols. 185, 181, 188–90.

Fourth. The state of facts upon which the remedial act ratifying the bonds was passed, supports at once the justice of this legislation and enforces its benign and efficient execution by judicial authority.

This act was passed April 28, 1871.

SEC. 1. All the acts of the Commissioners in issuing the bonds and exchanging them for the stock of the railway company, are "ratified and confirmed."

SEC. 2. No bond now held "in good faith *or* for a valuable consideration," shall be void or voidable by reason of any defect or omission in the consent of the taxpayers, provided the exchange of bonds for stock was made at par value of the bonds, and that the issues do not exceed the amount authorized by the act.

SEC. 3. Saves pending suits from abatement and allows them to go to judgment.

It will be noticed that this act was passed upon the legislative survey of the completed transaction, and of the relation the towns, the public, the railroad company and its stockholders, the bondholders, and the honor and duty of the State held to the completed transaction.

What other solution of the situation would have been just or tolerable, either to the local communities, the individual interests, or the character of the State, has not been suggested in argument or by judicial reasoning in the course of this litigation.

Fifth. The nature of the equity suit as to parties, subject-matter, interlocutory proceedings, and final judgment, requires a more complete and explicit statement than is shown in the plaintiff's brief.

This suit was commenced in June, 1869, by the Attorney-General, in the name of the People, in the relation of two taxpayers of the town of Thompson.

The defendants were the town Commissioners, the town itself, the railway company, and the contractors for building the road.

Its object was a rescission of the exchange of bonds and stock between the Commissioners and the company, and a perpetual injunction against the *defendants* restraining them from "using, loaning, or selling the bonds."

Record, fols. 203, &c., 225, 226.

An *ex-parte* injunction was issued on filing the complaint, June 24, 1869.

Upon full argument this injunction was vacated, with costs to the defendants, July 27, 1869.

From this order no appeal was taken.

Nothing was done in this suit until a trial, May 20, 1872, before a judge, without a jury, "the proofs being uncontradicted." Upon the result of this trial a judgment was entered in behalf of the people for rescission and injunction, according to the prayer of the complaint.

These proceedings seem to have been as upon default. No proceedings seem to have been taken to bring the stock or bonds into court, to bring parties in by advertisement or otherwise, and apparently no results have followed from this judgment in the dark and in the air, except the provision for costs.

It may seem surprising that an Attorney-General should proceed with such a suit, and to such a judgment, after the passage of the ratifying act of 1871.

POINTS.

FIRST POINT. Upon the trial the court below ruled in conformity with the legal conclusions reached, upon full argument, in the same court, upon the same securities, in a suit against the same defendant.

That case is reported, and the principles and authorities which disposed of this case in favor of the plaintiff below, at the trial, accord with the established doctrines of this court.

Cooper *v.* Town of Thompson, 13 Blatchf., 434.

There have never been any objections made to the entire conformity of these bonds, in their issue, negotiation, and application, to the provisions of the enabling act by which the transaction was authorized, or to the right of recovery thereon at the suit of *any* holder, save the two following:

First. The enabling act provided that the prerequisite "*consent*" of the "taxpayers shall state the amount of money authorized to be raised in said town or village, *and the railroad company in the stock of which said company shall be invested.*"

Act, sec. 2; Record, p. 74.

The act authorizes and restricts the investment in these terms:

"The money that shall be raised shall be invested in the stock of such company now organized, or that may hereafter be organized, within two years after the passage of this act, for the purpose of building or aiding in the building of a railroad from the village of Monticello through the towns of Thompson, Forestburgh, and Deerpark to Port Jervis, in the county of Orange, and said money shall be applied and used in the construction of such road as aforesaid, its buildings and necessary appurtenances, and for no other purpose."

Act, sec. 3; Record, p. 74.

The "*consent*" is set out in full in the record. (Folio 199.) It recites the act, by its title, describing the railroad, states the amount of money to be raised, and consents that, besides raising the money, the Commissioners may "do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid."

The objection to this "*consent*" is, that it does not "state" the railroad in which the investment is to be made.

Second. The other objection touches, not the prerequisites of the Commissioners' authority, but the manner of its execution.

The Commissioners exchanged the town bonds with the railroad company for its stock at the par of each. This is alleged to be not in pursuance of any authority conferred by the act, and to make the bonds invalid in the hands of any holder having notice of such negotiation.

The act of 1871 was passed in view of these alleged infirmities in the transaction by the Commissioners, and to remove the imputations upon the validity of the bonds arising therefrom.

The first section of this act provides that "the acts of the Commissioners" (naming them) "in issuing bonds upon the faith and credit of their respective towns, and in exchanging them for the stock of the company organized for the purpose of constructing the railroad contemplated by said act, are hereby ratified and confirmed."

The second section of the act more elaborately, though scarcely more effectually, extirpates the objection of the defect in the "CONSENT," to which it is confined. It enacts that the bonds held, either in good faith *or* for a valuable consideration, notwithstanding any defect in the "*consents*," shall be "as valid and effectual for every purpose as if such defect or omission had not occurred."

There is a *proviso* in this section that "any exchange of

bonds by said Commissioners for the stock of said company was made at the par value of the said bonds," and "that the respective issues of the said bonds by their Commissioners do not exceed the amount authorized by said act."

As there is nothing in the record to feed these provisos, they may be dismissed from the discussion.

Upon any recognized methods of forensic or judicial reasoning, and upon the jurisprudence of this court, it is difficult to discern any ground for reversal of the judgment below giving a recovery on these bonds.

SECOND POINT. Upon very recent decisions of this court, the alleged defect in the "consent" disappears, and the "consent" must be adjudged sufficient under the original enabling act.

Venice *v.* Murdock, 92 U. S., 494.
Scipio *v.* Wright, 101 U. S., 665.

The dissent of Mr. Justice Clifford and Mr. Justice Swayne, in this last case, was obviously not on this point, which sustained the judgment below, but upon the other point, which reversed it.

The opinion of the court upon the point now presented is on pages 670, 671.

In the case at bar, the act had described the railroad company in which alone the investment of the town's funds could be made. The consent of the taxpayers was required to that investment. Their consent to any other would have been nugatory.

The text of the consent exhibits complete evidence that the taxpayers signing knew of, and assented to, the statutory application of the money to be raised. The text was

more formal and comprehensive than the requirement of the act in that behalf; not less precise or less expressive of their assent.

If this question is thus disposed of in this court, there is no occasion to rely upon the act of ratification to cure this alleged infirmity.

THIRD POINT. If, however, corroboration of the bondholders' right to recover is needed from the remedial act of 1871, the terms of that act are precise and efficacious to that end.

There is no pretense, if the quality of *bona-fide* holder without notice of this defect in the consent, and for value, is important to the bondholders' recovery, that the plaintiff below does not occupy that position.

Indeed, the case in the Court of Appeals of New York, relied on by the plaintiff in error to defeat the present action, concedes that the defect in the "CONSENT" is cured by the remedial act, which is valid to that effect.

In Horton *v.* Town of Thompson the court says:

"This consent was fatally defective in not naming the railroad company to the construction of which the fund should be applied. Inasmuch, however, as the consent was sufficiently comprehensive in its terms to embrace the road in question, and the Legislature might legally have authorized it to be in the form in which it was actually given, the validating act of 1871 probably cured the defect in its form."

71 N. Y., p. 522.

But, under the uniform tenor of the decisions of this court, the recitals of the bond itself overreach, in the hands of a *bona-fide* holder, the original infirmity, if it should be so held by this court, and dispenses with any necessity of recourse to the act of 1871 for its cure.

FOURTH POINT. The second objection to the recovery of the plaintiff below remains to be considered, viz., the objection that the bonds were exchanged for stock of the company at the par of each, and such use of them was not in pursuance of the statute authority, and makes the bond void in the hands of every subsequent taker having notice of this fact.

This point, also, was considered by this court in the case of Scipio *v.* Wright, 101 U. S., *ut supra.*

In the first place, the facts in that case show that the plaintiff's vendor bought the bonds from the railroad company with actual notice that money had not been borrowed on them, but they had been exchanged for stock. The plaintiff bought them past due, and gave a note which remained unpaid. Therefore the court says:

"Neither Howland, therefore, nor Wright stands in the position of a *bona-fide* purchaser without notice of the exchange of the bonds for stock. *Had either of them been such a purchaser, the plaintiff's right to recover could not be gainsaid.*" (p. 674.)

And this is the accepted doctrine of the New York cases. The People *v.* Mead, 24 N. Y., 114, holds that the exchange for stock instead of sale is not a defense against one "who purchased in good faith for a good and valid consideration." (p. 125.)

In the second place, this court considers whether the exchange of bonds for stock defeats a recovery by one affected with notice of that fact. Upon this the court says:

"Were the question an open one, it would seem that it ought not to be a defense.

"So far as discharging the debt of the town for its stock subscription is concerned, and so far as relates to obtaining a full-paid certificate, the transaction is, in legal effect, the same as if the money had been borrowed by the town directly and paid over to the company. And if it had ap-

peared affirmatively that Howland had paid the full face of the bonds and interest, without any discount, when he bought, *every object* which the statute could have had in view in enacting that it should be lawful for the town officers to borrow on the credit of the town a limited amount of money and pay it over to the railroad company, executing town bonds therefor, would have been accomplished." "Such a case, however, is not presented by this record." (p. 174.)

This court holds, also, that this last view is the doctrine of the New York cases, which it proposes to follow, quoting Selden, J., in the leading case, as saying: "If what was done was the same in effect as if the money had been borrowed and paid over to the railroad company, the difference in form would not be material." (Gould *v.* Sterling, 23 N. Y., 456.)

Finally, the court holds that "a plaintiff affected with notice of the exchange, and not showing that the *railroad company* received par value for the bonds when it parted with them, was by the New York decisions precluded from recovering on bonds thus exchanged." (pp. 675, 676.)

FIFTH POINT. Upon the doctrine of this court, as laid down in Scipio *v.* Wright, the present plaintiff, without seeking aid from the remedial act of 1871, can recover.

First. Because the record shows that both he and his vendors had no notice whatever of the *fact* that the bonds were exchanged for the railroad stock.

Second. Because the recitals of the bond carry no such information.

The recitals inform the purchaser (1) "that this bond is a valid security, being issued by virtue of an act entitled &c.;" (2) that the town's promise to pay is "by virtue and in pursuance of the acts, &c.;" and (3) that the town has

value received for its obligation to pay the money of the bond "in the stock of the Monticello and Port Jervis Railway Company," which is precisely what the statute required it to have, and which the purchaser was interested to know that the town has, as a continuing means and resource for meeting the bonds.

Third. Because the circumstance of the railway company receiving par for the bonds on its parting with them affirmatively appears upon the record. This proof satisfies the requisition of equivalency in the exchange of bonds for stock to sale at par, and payment of proceeds to the railroad company exacted in the New York cases, as interpreted by this court in Scipio *v.* Wright.

This proof was not made in Horton *v.* Thompson, 71 N. Y., *ut supra.*

SIXTH POINT. The retention of the stock, the payment of coupons, and the secured advantage of the completed railroad, of which the town was co-proprietor, preclude the repudiation of these bonds.

If the town could have any relief, it would be upon the terms of restoring what it received for the bonds.

Town of Venice *v.* Woodruff, 62 N. Y., 462.

SEVENTH POINT. But the acceptance of this court of the New York cases as its guide on the question of the defense of the exchange of bonds, instead of its own doctrine on the point, is a departure from its previous rule on the question, and should not be adhered to.

In Venice *v.* Murdock, 92 U. S., 494, this court says:

"The decisions of the Court of Appeals, in cases arising upon the same statute, and a similar state of facts, are not conclusive in this court, *as such decisions do not present a case of statutory construction.*"

The court further says, as a reason for not following the State courts, that "they are not attempts at interpretation." "They assert general principles, to wit, that persons empowered to borrow money and give bonds therefor, for the purpose of paying it to an improvement company, are not authorized to deliver the bonds directly to the company; a doctrine denied in this court, in the Supreme Court of Pennsylvania, and even in the Court of Appeals of New York. (People *v.* Mead, 24 N. Y., 124; Venice *v.* Woodruff, 62 Id., 426.")

The Commission of Appeals of New York holds the same view of these questions as being of general reason and jurisprudence, and not of interpretation of statutes.

In an opinion of great ability, in which the Commission of Appeals comes to conclusions on these questions in accordance with the doctrines of this court, Judge Johnson says:

"The questions involved are not peculiar to our jurisprudence, and do not depend on the special language of our Constitution, but rather upon views in respect to governmental power."

Duanesburgh *v.* Jenkins, 75 N. Y., 177, 194.

EIGHTH POINT. Upon the remedial act of 1871, the exchange of bonds for stock is expressly and effectually ratified. Of this no question has been or can be made.

In a single case, however, the competency of the Legislature of New York to pass the act is denied.

Horton *v.* Thompson, 71 N. Y., 525–6.

The incompetency of the legislation is not put upon any prohibition or restriction of the Constitution of the State of New York, but upon the proposition that the taxpayers not having consented to an exchange of bonds for stock, it is beyond legislative power to ratify the exchange by authority of law.

This proposition will not approve itself to the reason of this court. It is wholly unsupported by authority. It is flatly at variance with recent decisions of the Commission of Appeals, and of the Court of Appeals itself. It cannot stand consistently with the settled jurisprudence of the State as to this familiar exercise of legislative power, and it does not assume to overrule these settled doctrines.

It was decided by a divided court, four to three judges, reversing a unanimous decision of the Supreme Court, and overruling a contemporaneous decision of other judges of the Supreme Court in the same litigation.

5 Hun. R., 475; 7 Hun. R., 452.

An examination of the two cases of Duanesburgh *v.* Jenkins, 57 N. Y., 177, and of Williams *v.* Duanesburgh, 66 N. Y., 129, and of the leading cases there cited and commented on, will show that the case in 71 N. Y. is without reason or authority in the judicial history of the State.

The statutes, original and remedial, which are considered in these cases, are, perhaps, sufficiently cited in the cases. They are—

Statutes 1856, ch. 64.
Statutes 1857, ch. 401.
Statutes 1859, ch. 384.
Statutes 1864, ch. 402.

The earlier cases in the New York Reports, which maintain the legislative authority as established by these recent cases, are too numerous to cite. Leading cases are—

Bank of Rome *v.* Village of Rome, 18 N. Y., 35.
People *v.* Mitchell, 35 N. Y., 551.
(Citing and adopting Maryland *v.* B. & O. R. R. Co., 3 How. U. S., 534.)
Town of Guilford *v.* Supervisors, 13 N. Y., 143.
Darlington *v.* Mayor, &c., 31 N. Y., 164.
People *v.* Mayor, &c., 4 N. Y., 419.
Brewster *v.* Syracuse, 19 N. Y., 416.
People *v.* Mead, 24 N. Y., 114.

NINTH POINT. The effect of the judgment in the case of The People *v.* Benedict, given in evidence by defendant below, as a bar to plaintiff's recovery as *res adjudicata*, or its operation as *lis pendens*, does not require much attention. Nor does the third section of the ratifying act of 1871 give it any value in this litigation. Probably that equity suit for injunction was not included in the description "action or proceeding at law," used in that section.

The character of that suit has been sufficiently observed upon in the preceding statement of facts.

No decision in New York has paid any consideration to the proposition that the ratifying act was thus defeated by this stultification, and that the Attorney-General was the master of the Legislature and able to subvert its declared will.

In this court it is well settled that the doctrine of *lis pendens* does not affect holders of such securities as those in suit.

Lee County *v.* Rogers, 7 Wall., 181.
County of Warren *v.* Marcy, 97 U. S., 105.
Brooklyn *v.* Ins. Co., 99 Ib., 362.
Block *v.* Commissioners, Ib., 686.
Town of Orleans *v.* Platt, Ib., 676.

TENTH POINT. The defect in the bonds, of the omission of the Commissioners to put a *seal* to their names, as directed by the act, and as recited in the bonds, seems to require no notice since the ratifying act of 1871.

It has never been mentioned in the litigations in the courts of New York, nor was it raised on the trial below.

As an original question, it is difficult to consider the form of the security, in its operation to bind the town, as very important.

LAST POINT. The judgment below should be affirmed with costs.

WM. M. EVARTS,
Of Counsel for Defendant in Error.